2024

Digest of

CASE LAWS

Direct Taxes

(For Private Circulation)

Income Tax Appellate Tribunal
Bar Association, Mumbai
(Estd. 1965)

Celebrates 60 years of service

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All disputes are subject to the jurisdiction of Mumbai courts. Compiled by the Research Team of ITAT Bar Association, AIFTP, and KSA Legal Chambers.

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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, and Tribunal
- Most of the cases reported in the year 2024 are digested
- SLP is admitted or rejected, the reference is provided as editorial.
- 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.
- Case law index is provided in alphabetical order.

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.

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MESSAGE

Lakshmi is Chanchal, (mercurial) Money comes & goes. Monies kept in bank also get eroded in value because of inflation. The best thing to do is to start using money wisely.

I am very happy to know that my contribution to I.T.A.T. Bar Association is put to good use, thanks to the dynamism and vision of Dr. K. Shivaram and his team. The annual Digest will be of tremendous use to the tax lawyers and tax payers.

Such an endeavour requires great labour and hard work and his team is capable of achieving it.

My hearty congratulations for the efforts and the fruit, thereof.

Y. P. Trivedi

04.09.2025

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Preface

3017 Digest of Tax Case Laws on Direct Taxes – Reference to Circulars and Articles: Key Resources for the Tax Fraternity

We are pleased to present the *"2024 Yearly Digest of Case Laws on Direct Taxes"*, the 14th consecutive edition of this annual publication. Compiled and published by the ITAT Bar Association, Mumbai, this digest serves as a comprehensive reference for professionals practicing before the High Courts, the Income Tax Appellate Tribunal, and the Commissioners of Income-tax (Appeals).

In this edition, our Research Team has meticulously compiled and digested over 3,000 cases reported in 2024 across leading journals, magazines, and online platforms. The sources include *ITR (Vols. 460–471), Taxmann (Vols. 296–300), CTR (Vols. 336–341), ITD (Vols. 204–208), ITR (Tribunal) (Vols. 108–116), TTJ (Vols. 227–232),* as well as publications from AIFTPJ, BCAS, Chamber's Journal, and online portals such as itatonline.org, taxmann.com, and NYTTJ.

Arrangement of Case Laws.
Case laws are presented **section-wise** and in descending order of judicial forums—beginning with the **Supreme Court**, followed by **High Courts**, and then the **Income Tax Appellate Tribunal**. Editorial notes have been added to select cases, particularly where Tribunal rulings were upheld or reversed by High Courts, or where the Supreme Court granted or dismissed SLPs. The digest also incorporates allied law decisions and includes a dedicated chapter on circulars and articles, organized both section-wise and subject-wise for ready reference.

Indexing Methodology.
The **index of case laws** has been prepared alphabetically, based on the assessee or respondent's name, irrespective of whether the Revenue is the petitioner or appellant. For example:

- Alok Industries Ltd. v. ACIT → Alok Industries Ltd. v. ACIT
- CIT v. Noida Golf Course Society (Regd.) → Noida Golf Course Society (Regd.); CIT v. *
- Dy. CIT v. A.P. Knit Fab → A.P. Knit Fab; Dy. CIT v. *
- PCIT (Central) v. Dwarka Prasad Aggarwal → Dwarka Prasad Aggarwal; PCIT (Central) v. *
- UOI v. Rajeev Bansal → Rajeev Bansal; UOI v.*

This approach ensures quick and convenient access to case references, especially for busy professionals searching by party name.

Historical Context.
In 2012, the Association published the "Digest of Case Laws – Direct Taxes (2003–2011): *A Tax Companion"* to commemorate 150 years of the Bombay High Court. Since then, yearly digests from **2003 to 2024** have been made available on www.itatonline.org, freely accessible on desktops, laptops, mobiles, and tablets for the benefit of tax professionals and taxpayers.

Acknowledgments.
This publication is generously sponsored by the **Dr. Y.P. Trivedi Library Fund**. We express our sincere gratitude to **Dr. Y.P. Trivedi, Senior Advocate and Past President of the ITAT Bar Association, Mumbai,** for his continued encouragement and support to the Association's educational initiatives.

We also extend our appreciation to **Shri K.G. Gopal, Advocate, President of the ITAT Bar Association**, the office-bearers, and Managing Committee members for their wholehearted support in bringing out this annual digest as part of the Association's educational initiatives for the benefit of tax professionals.

We proudly acknowledge the **Research and Editorial Teams**, who have devoted their time and expertise on an honorary basis, ensuring the digest's high quality and reliability year after year.

Special thanks are due to the **Editor of the AIFTP Journal, Mr. Ajay R. Singh**, the **Editorial Team of AIFTP**, the **AIFTP Journal Committee**, **KSA Legal Chambers**, and law students **Ms. Ananya Sinha, Ms. Riddi Saraf, and Ms. Kairavi Navathe** for their valuable contributions.

Unique compilation
This publication uniquely compiles significant reported and unreported case laws in one place. Intended for **private circulation in print,** it serves as a quick and reliable reference tool for professionals.

While every effort has been made to ensure accuracy, inadvertent errors or omissions may occur. We request readers to kindly bring such instances to our notice so that corrections may be incorporated in future editions. We sincerely hope this Digest proves to be a valuable resource for the tax fraternity. Suggestions may be sent to: **itatonline.org@gmail.com or publications.itat@gmail.com.**

For Editorial and Research Team,

Yours sincerely,
Dr. K. Shivaram
Senior Advocate
10-10-2025

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President's Message

It gives me profound satisfaction to present the fourteenth edition of the *"Digest of Case Laws on Direct Taxes – 2025"*, an endeavour of the Income Tax Appellate Tribunal Bar Association, Mumbai.

The practice of law is not confined to the arguments we advance in courtrooms. It is equally nurtured by scholarship, by reflection, and by the systematic organisation of knowledge. This Digest embodies that spirit. It brings within its covers a curated collection of significant rulings from Tribunals across the country, carefully digested with clarity and precision. Each case has been distilled into its essence, with headings, citations, and editorial remarks that make complex principles accessible, while the index provides a ready guide for quick research.

The true worth of such a publication lies not merely in the information it gathers, but in the values it embodies: the belief that knowledge must be shared, that justice is strengthened when the law is transparent, and that the Bar has a continuing duty to contribute to the intellectual resources of the profession. In this respect, the Digest stands as both a tribute to the labours of its compilers and as a resource for generations of professionals.

I extend my deepest gratitude to Dr. K. Shivram and his team, whose tireless commitment and meticulous work over the years have sustained this project. Their endeavour reflects a selfless dedication to the cause of legal learning. I also acknowledge with great appreciation the generous support of Dr. Y. P. Trivedi, whose patronage has enabled this initiative to flourish.

This Digest has, over time, been acknowledged by the professional community as a valuable tool in their day to day practice. With this fourteenth edition, I am confident that it will continue to enrich the practice of law, foster greater understanding of evolving jurisprudence, and contribute to the larger mission that underpins our legal system: that justice must not only be done, but must be accessible, intelligible, and fair.



Mr. K. Gopal
President
ITAT Bar Association, Mumbai



ITAT Bar Association Mumbai

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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
GST Law Times	–	GSTL
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
www.scconline.com

Abbreviations – Authorities

Additional Commissioners of Income-tax	–	Addl. CIT
Additional Directors of Income -tax	–	ADIT
Additional Commissioners of Income-tax	–	ACIT
Authority for Advance Rulings	–	AAR
Assistant Commissioner of Income-tax	–	ACIT
Assistant Commissioner of Income-tax (Exemption)	–	ACIT(E)
Assistant Directors of Income-tax	–	ADIT
Assistant Director of (Exemption)	–	ADIT(E)
Assessing Officer	–	AO
Appellate Tribunal	–	ITAT
Central Board of Direct Taxes	–	CBDT
Central Bureau of Investigation	–	CBI
Central Processing Center	–	CPC
Chief Commissioner of Income-tax	–	CCIT
Commissioner of Income-tax	–	CIT
Commissioner of Income-tax (Appeals)	–	CIT(A)
Central Processing Centre	–	CPC
Deputy Commissioners of Income-tax	–	Dy. CIT
Deputy Commissioners of Income-tax (Appeals)	–	Dy.CIT(A)
Deputy Director of Exemption	–	DD.(E)
Deputy Directors of Income-tax	–	DDIT
Director of Income-tax	–	DIT
Director General of Income-tax	–	DGI
Dispute Resolution Panel	–	DRP
High Court	–	HC
Income-tax Department	–	ITD
Income-tax Officer	–	ITO
Income-tax Settlement Commission	–	ITSC
Joint Commissioners of Income-tax (Appeals)	–	JCIT(A)
Joint Commissioner of Income-tax	–	JCIT
Joint Directors of Income-tax	–	JDIT
National Faceless Assessment Centre	–	NFAC
Principal Commissioner of Income-tax	–	PCIT

Principal Chief Commissioner of Income-Tax	–	PCIT
Principal Director General of Income-Tax	–	PDGI
Principal Directors of Income-tax	–	PDIT
Principal Director of Income -tax (Investigation)	–	PDIT (Inv)
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.)
Manipur - (Manipur)		
Meghalaya - Meghalaya		
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	–	(Amritsar)
Bangalore	–	(Bang.)
Bilaspur	–	(Bilaspur)
Calcutta	–	(Kol.)
Chandigarh	–	(Chd.)
Chennai	–	(Chennai)
Cochin	–	(Cochin)
Cuttack	–	(Cuttack)
Delhi	–	(Delhi)
Gauhati	–	(Gauhati.)
Hyderabad	–	(Hyd.)
Indore	–	(Indore)
Jabalpur	–	(Jabalpur)
Jaipur	–	(Jaipur.)
Jodhpur	–	(Jodhpur)
Lucknow	–	(Lucknow)
Mumbai	–	(Mum.)
Nagpur	–	(Nag.)
Panaji	–	(Panaji)
Patna	–	(Patna)
Pune	–	(Pune)
Raipur	–	(Raipur)
Rajkot	–	(Rajkot)
Ranchi	–	(Ranchi)
Surat	–	(Surat)
Vishakhapatnam	–	(Visakha)



Income Tax Appellate Tribunal Bar Association, Mumbai

The Income Tax Appellate Tribunal Bar Association Mumbai was established on 18th November, 1965. Over the years, the Association has been led by eminent legal luminaries, including Shri G. A. Gaitonde, (erstwhile President of the Income Tax Appellate Tribunal,) Padma Bhushan Dr. N. A. Palkhivala, Senior Advocate (1967-2002), Dr Y. P. Trivedi , Senior Advocate (2003-06), Shri S. E. Dastur Senior Advocate (2007-08), Shri Dinesh Vyas Senior Advocate (2009-10). Dr. K. Shivaram Senior Advocate (2011-12), Shri Arun P. Sathe Senior Advocate (2013-2014) Shri Subhash S. Shetty Advocate (2015-16) Mrs Arati Vissanji Advocate (2017-18) Shri Hiro Rai Advocate (2019-20),) Shri Vipul Joshi Advocate, (2021- 22 Shri Porus Kaka, Senor Advocate (2022-23). Currently, Shri K. Gopal, Advocate, has been elected President for the term 2025–26.

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, and 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 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, Senior Advocate Past President of ITAT Bar Association, enabled the ITAT Bar Association to set up a separate section in International Law Library dedicated to Late Shri R. J. Kolah, Advocate Dr Y. P. Trivedi Senior Advocate 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,Senior Advocate 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. Ad .interim relief of the Bombay High Court was up held by the Apex Court . (ITAT Bar Association v. Secretary of I& B(WP No 624 0f 1999 dt. 3-7 -2025) www.itatonline.org).
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 visited the premises of the ITAT on invitation of the ITAT Bar Association of Mumbai on 11-1-2004 and unveiled the portrait of Padma Bhushan Late Dr. N. A. Palkhivala, Senior Advocate 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 the 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 " Padma Bhushan Dr. N. A. Palkhivala, Senior Advocate Memorial National Tax Moot Court Competition" and "Research in Tax Law". The Moot Court competition now organised on virtual mode in association with All India Federation of Tax Practioners and National Law College Mumbai, where in more than 100 law colleges participate in the Moot court competition and more than 300 law students participate by presenting the research paper on tax law.

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 Practitioners 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. Annual Digests of Case Laws reported in various journals are published and hosted on www.itatonline.org for the benefit of professionals and taxpayers.

Income Tax Appellate Tribunal Bar Association in Association with All India Federation of Tax Practitioners have published in the year 2016, a publication dedicated 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 Association follow a Code of Ethics, enforced by a Disciplinary Committee headed by eminent professionals.

Website www.itatonline.org to enable the professional members and guests to access the 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 on the website of www.itatonline.org. We are pleased to state that www.itatonline.org has more than 25,000 subscribers.

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

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S. 2(14)(iii) : Capital asset-Agricultural land-Land situated outside the Municipal limits-As per the last Census i. e., the Census of 2011, Zirakpur had a population of 95,443-Land situated more than four kilometers away from the Municipality Limits of Zirakpur-Sale consideration is not taxable. [S. 45] 1

Assessee sold agricultural land situated in village Chhatt which was outside the municipal limits as described in Notification No. 9447, dt. 6th Jan. 1994. It was by virtue of the Notification dt. 4th Dec. 2012, issued by the Department of Rural Development and Panchayats, Government of Punjab that the Gram Panchayat of village Chhatt was created. The village Chhatt, at that time, was not comprised within the municipal limits of Zirakpur. By virtue of Notification No. 10/16/16-3 SS3/2788, dt. 19th Dec. 2016 issued by the Department of Local Bodies, Government of Punjab, that the municipal limits of Zirakpur were extended and village Chhatt was included therein. The Tribunal held that the land is situated more than four kilometres away from the municipal limits of Zirakpur and as per the last Census i.e., the Census of 2011, Zirakpur had a population of 95,443. Accordingly the land sold by the assessee was agricultural land, not forming part of capital asset within the meaning of s. 2(14), accordingly the amount received by the assessee is was not chargeable to tax. (AY. 2017-18)

Avtar Singh v. ITO (2024) 230 TTJ 506 / 239 DTR 113 / 166 taxmann.com 278 (Chd)(Trib)

S. 2(14)(iii): Capital asset-Agricultural land-Sale of agricultural land-Land is situated beyond 10 Kms. from Municipal limits-And Shown as wet land-Registration of immovable property by land Registrar-Paid land revenue-Cannot be assessed as capital gains. [S. 45] 2

Held that the assessee had paid the land tax to the local Revenue office as agricultural land and had furnished the certificate issued by the Village Administrative Officer to prove that the land was situated beyond 10 kms. from the municipal limits as to fall outside the definition of capital asset per section 2(14) of the Act. The assessee had also furnished before the Dispute Resolution Panel the land details available in the records of the Revenue authorities showing it to be wet land for the purpose of valuation for registration of immovable property by the Land Registrar. Tribunal held that merely because the Tahsildar had left the columns of crops grown or cultivated blank, that could not lead to the conclusion that the immovable property is a capital asset. Addition as capital gain is deleted. (AY. 2015-16)

Nataraj Ramaiah v. ITO (IT) (2024) 115 ITR 31 (SN)(Chennai)(Trib)

3 **S. 2(14)(iii) : Capital asset-Agricultural land-Capital gains-Land is not situated within jurisdiction of Municipality-Population of village was 907 persons as per latest published census of 2011-Long term capital gains on sale of agricultural land cannot be taxed as capital gains. [S. 2(14)(iii)(a), 45, 54F]**

Assessee sold agricultural land at Mohali in 2014 and claimed deduction u/s. 54B of the Act by buying another agricultural land. AO considered agricultural land sold as a capital asset by rejecting contention of the assessee that land sold was outside the limits of the municipality and hence, it was exempt income. CIT(A) confirmed addition made by the AO. On appeal the Tribunal deleted the addition by accepting the evidence adduced by the assessee showing the population of the village was mere 907 persons as per published census and that land was situated outside the limits of the municipality. The long term capital gains on sale of land can could not be brought to tax. (AY. 2015-16)

Kulwant Singh v. ITO (2024) 112 ITR 719 / 165 taxmann.com 383. (Chd)(Trib.)

4 **S. 2(14)(iii): Capital asset-Agricultural land-Sale of agricultural land-Purchaser changed the use for commercial purposes-Not assessable as capital gains. [Gujarat Tenancy and Agricultural Lands (Amendment) Act, 1997, S. 63AA,65B]**

The assessee sold four pieces of agricultural land to a company Steel Strips Wheels Ltd. The purchaser received permission for use of the land for bona fide industrial purposes. Assessee has obtained certificate for change of land use from agricultural to non-agricultural. The assessee contented that the land sold by him did not qualify as "capital asset" in terms of section 2(14)(iii) being rural agricultural land. The AO held that the land sold by the assessee as non agricultural land and concluded that it qualifies capital asset and therefore capital gained earned is liable to tax. Tribunal held that, AO has erred in interpreting S. 63AA of the Gujarat Tenancy and Agricultural land laws Act,1997 and the land did not qualify capital asset in terms of s. 2(14)(iii) of the Act. Accordingly the capital gains is not liable to tax. (AY. 2016-17)

Hiten Tulshibhai Engineer v. ITO (2024) 204 ITD 98 (Ahd)(Trib)

5 **S. 2(15): Charitable purpose-General public utility-Publishing newspapers-Receipts more than 10 lakhs-Matter remanded for verification. [S. 11, 12A.]**

The Tribunal held that the denial of exemption under section 11 by the Revenue authorities without examining whether activities were in nature of trade commerce of or business was not justified merely on the ground that receipts had exceeded the limit of Rs. 10 lakhs. The matter was is remanded to the Assessing Officer to decide the issue in accordance with the judgement of apex court in Ahmedabad Urban Development Authority (2023) 449 ITR 1 (SC), examine the status of charitable entity granted under section 12A of the Act, examine the plea that the assessee has very nominal profit or margin from the main activity of selling IRS reports to members and non-members and also to decide the issue on principle of mutuality in light of the decision earlier years order of the Tribunal. (AY. 2009-10 to 2013-14)

Media Research Users Council v. ACIT [2024] 205 ITD 170 (Mum)(Trib)

S. 2(22)(e): Deemed dividend-Trade advances-Commercial transactions-Cannot be assessed as deemed dividend-Order of High Court is affirmed-SLP of Revenue is dismissed. [Art. 136] 6

Affirming the order of the Tribunal, the High Court by held that trade advances which were in nature of commercial transactions would not fall within ambit of word 'advance' in section 2(22)(e) of the Act. SLP filed by revenue is was dismissed.

PCIT (Central) v. Dwarka Prasad Aggarwal (2024) 299 Taxman 363 /471 ITR 435 (SC)

Editorial : PCIT v. Dwarka Prasad Aggarwal (2022) 140 taxmann.com 32 /(2024)471 ITR 432 (Delhi)(HC)

S. 2(22)(e): Deemed dividend-Capital contribution by companies in which assessee Firm's partners were shareholders-Commercial Transaction-Not loans and advances-Not assessable as deemed dividend. [S. 260A] 7

During the year under consideration, the assessee-partnership firm received capital contributions from two partner-companies in which two other partners held substantial interest. The assessee was neither a registered shareholder nor a beneficial owner of shares held in the companies. However, the assessing officer assessed the contributions as deemed dividend under section 2(22)(e) and taxed the same in the hands of assessee. The Commissioner of Income-Tax (Appeals) held that the capital contribution could not be treated as loans or advances extended to the assessee and therefore, the assessing officer could not have treated the same as deemed dividend in the hands of the assessee and the same was upheld by the Tribunal. On appeal by the Department, the Delhi High Court affirmed the decision of the Tribunal. The High Court further held that, if at all addition could have been made, it could've been made in hands of two individual partners and that too only by their assessing officers after affording them an opportunity of being heard. (AY. 2006-07), 2010-11)

PCIT v. Wig Investment (2024) 461 ITR 117 / 158 taxmann.com 379 (Delhi HC)

S. 2(22)(e): Deemed dividend-Business nexus and business exigency of entire transaction proved-Advance could not be construed as the receipt of dividend. 8

Held that the Assessee is an investment company holding 15. 47 percent. of equity in lender company took a loan from the bank for investment in two other companies against collateral security given by the director of the assesse. The assessee utilized the entire loan for investment. The company in which the assessee held 15. 47 percent equity lent money to the assessee for making monthly payments to the bank. Business nexus and business exigency of the entire transaction were proved, hence advance could not be construed as the receipt of a dividend. (AY. 2012-13)

Ambey Capital P. Ltd. v. Dy. CIT (2024) 111 ITR 4(SN) (Delhi)(Trib.)

S. 2(22)(e) : Deemed dividend-Loans and advances-Regular business transactions-Not a share holder-Not taxable as deemed dividend. 9

Held that neither the assessee was a substantial shareholder of ATL nor ATL was a shareholder of the assessee. After relying upon various decisions, the Tribunal held that since the assessee was not a shareholder in ATL, which has given loan/advance to assessee, therefore, the assessee did not fall under any of the limbs of section 2(22)(e)

of the Act, and the same could not be invoked in the hands of the assessee but only in the hands of KSWPL. (AY. 2013-14, 2014-15, 2016-17, 2017-18)
Apeejay P. Ltd. v. Dy. CIT (2024) 111 ITR 231 (Kol.) (Trib.)

10 **S. 2(22)(e) : Deemed dividend-Loans and advances-From group company (APL)-Beneficial shareholder was KSWPL under whose controlling interest and influence, APL had given loan/advance to assessee-Deeming provisions of section 2(22)(e) under second limb were attracted on KSWPL and not on assessee-loan amount was not taxable in hands of assesse. [S. 5 (1)(b)]**
The assesseee was not a registered share holder of APL who was lender company. Assessee received certain sum as loans/advances from its group company (APL). Assessing Officer treated amount of loans/advances received by assessee from APL as deemed dividend under section 2(22)(e) on ground that there was a common shareholding by KSWPL having substantial interest in both APL and assessee. CIT(A) affirmed the order of the Assessing Officer. On appeal the Tribunal held that KSWPL was in a position to control affairs of both APL and assessee. Benefit of transaction between APL and assessee accrued to KSWPL who was in a controlling position having more than 20 per cent of shareholding in both of them-Assessee and APL were in no way in a position to compel KSWPL in any way for exercising its voting rights in a particular manner. Thus, beneficial shareholder was KSWPL under whose controlling interest and influence, APL had given loan/advance to assessee and, accordingly, deeming provisions of section 2(22)(e) under second limb were attracted on KSWPL. Further, taking into consideration provisions contained in section 5(1)(b), income accrues or arises or is deemed to accrue or arise in hands of KSWPL and not in hands of assessee and same was not taxable in hands of assessee. Addition was deleted. (AY. 2013-14, 2014-15)
Apeejay Surrendra Management Services (P.) Ltd. v. DCIT (2024) 205 ITD 737 (Kol) (Trib.)

11 **S. 2(24)(xviii) : Income – Subsidy - Incentives – Constitutional validity – Finance Act, 2015 – All subsidies, grants, incentives, concessions, reimbursements etc. to be treated as income – Court cannot substitute legislative judgment of economic policies - Validity upheld. [S. 4, Art. 12, 14, 19, 226, 246, 265, 289]**
The assessee challenged the constitutional validity of section 2(24)(xviii) inserted by the Finance Act, 2015, which brought all forms of subsidies, grants, cash incentives, duty drawback, concessions and reimbursements within the ambit of taxable income, irrespective of whether capital or revenue in nature. It was contended that the amendment overruled judicial precedents applying the "purpose test" to subsidies, violated Articles 12, 14, 19, 246, 265 and 289 of the Constitution and was contrary to sections 4 and 5 of the Act. The High Court held that taxation is a matter of legislative policy; there is a presumption of constitutionality and courts cannot substitute legislative judgment in economic matters. Mere reduction in profitability or hardship to the assessee does not render a tax provision unconstitutional. The amendment was a transparent legislative act to recalibrate fiscal policy, and invalidation would cause fiscal chaos and refund claims. The provision was therefore upheld as constitutionally valid.
Serum Institute of India (P.) Ltd. v. UOI [2023] 157 taxmann.com 107 / [2024] 463 ITR 582 / 336 CTR 6 (Bom)(HC).

S. 2(31) : Person-Association of person-Characterization of consortium-Agreement-Terms of the agreement will be the deciding factors-Taxable as an AOP and not as individual members. 12

Held that characterization of consortium as an AOP, has to be determined in terms of the agreement between parties. Circular No 7/2016 dt. 7-3-2016 (2016) 382 ITR 27 (St.). Accordingly the Tribunal held that Consortium failed to fulfil the relevant requirement of the circular. Thus the TRIBUNAL upheld the taxability of Consortium as an AOP and not as individual members. (AY. 2011-12)(ITA No. 518 / Del/2022 dt. 22-12-2023)
Pico Deepali Overlay Consortium v. DCIT (2024) Chamber's Journal-February-P. 94 (Delhi) (Trib)

S. 2(42A) : Short-term capital asset-Capital gains-Unlisted shares-Investment in a residential house-Amended provisions of section 2(42A), which exclude holding period of unlisted shares being held for 12 months to be treated as long-term capital gain is applicable from assessment year 2015-16-Shares held around 31 months-Matter remanded to decide issue afresh as per provisions of law. [S. 45, 54F] 13

Assessee sold shares and earned LTCG and claimed deduction under section 54F. Assessing Officer denied exemption under section 54F on ground that period of holding of shares was less than 36 months i. e. 31 months. Drawing support from provisions of section 2(42A), Assessing Officer held that sale of shares gave rise to STCG and taxed same. CIT(A) affirmed the order of the AO. On appeal the Tribunal held that since provisions of section 2(42A) has been amended to exclude holding period of unlisted shares being held for 12 months to be treated as LTCG but said amendment has come from assessment year 2015-16 and applicable therefrom therefore, amended provisions is not applicable. Since holding period of impugned shares was around 31 months, capital gain was to be treated as LTCG and, hence, Assessing Officer should re-consider claim of exemption under section 54F and decide issue afresh as per provisions of law. (AY. 2013-14)
Ravi Jakhar v. ACIT (2024) 208 ITD 633 (Mum) (Trib.)

S. 4 : Charge of income-tax-Accrual-Interest on sticky advances credited to memorandum account is not taxable. [S. 145, Art. 136] 14

Interest on sticky advances credited to memorandum account is not taxable. Followed *UCO Bank v. CIT (1999) 237 ITR 889 (SC).* (AY. 1982-83)
CIT v. Citi Bank N. A. (NO. 3) (2024)469 ITR 403 (SC)
Editorial : CIT v. Citi Bank N. A ITR No. 191 of 1997 dt. 10-4-2003 (Bom)(HC)

S. 4 : Charge of income-tax-Accrual-Banks-Interest on bad and doubtful debts is not taxable. [S. 5, 119, Art. 136] 15

Held that the interest on bad and doubtful debt was not taxable in view of the Central Board of Direct Taxes circular dated October 9, 1984. Followed UCO Bank v. CIT (1999) 237 ITR 889 (SC) (AY. 1985-86, 1986-87)
CIT v. Standard Chartered Bank (2024) 469 ITR 408 (SC)
Bank of Rajasthan Ltd v. CIT (2024) 469 ITR 280/ 301 Taxman 463 (SC)
Editorial : CIT v. Standard Chartered Bank,ITR No. 87 of 1996 dt 16-7-2003 (Ker) (HC), CIT v. Bank of Rajasthan Ltd (2009) 316 ITR 391 (Raj)(HC), reversed, Decision in CIT (LTU) v. State Bank of India (2020) 428 ITR 316 (Karn)(HC), affirmed.

16 **S. 4 : Charge of income-tax-Capital or revenue-Preoperative expenditure pending capitalization-Interest Earned from fixed deposits of unutilised foreign external commercial borrowing loans during period of construction-Interest capitalised in the books of account-Capital receipt-SLP of revenue is dismissed due to failure to explain satisfactorily condonation of delay of 699 days in filing SLP. [S. 28(i), 56, 145, Art. 136]**

During this year, the assessee could utilise only part of loan which was borrowed during period of construction. The assessee had temporarily made fixed deposits of the external commercial borrowing funds till utilisation for fixed asset or capital expenditure. The assessee had paid interest of Rs. 13.38 crores on the borrowings and had earned interest of Rs. 4.03 crores on the fixed deposits. The net interest of Rs. 9.35 crores was added to the preoperative expenditure pending capitalization. The Tribunal allowed the capitalisation of interest on fixed deposit receipts earned during the period of construction. On appeal the Court affirmed the order of Tribunal. SLP of Revenue was dismissed due to failure to explain satisfactorily condonation of delay of 699 days in filing SLP (AY. 2012-13), (2013-14)

PCIT v. Triumph Realty Pvt. Ltd. (2024) 468 ITR 109 (SC)

Editorial : PCIT v. Triumph Realty Pvt. Ltd (2023) 450 ITR 274 (Delhi)(HC), PCIT v. Triumph Realty Pvt. Ltd. (No. 1) (2023) 450 ITR 271 (Delhi)(HC)

17 **S. 4 : Charge of income-tax-Consideration received for relinquishment of trustee ship-Not capital in nature-Assessable as income-SLP of Assessee is dismissed. [S. 45, 132, Art. 136]**

On appeal the High Court held that the consideration received by the trustees for relinquishment of the trusteeship could not be treated as a capital receipt for the purposes of assessment as capital gains, but would have to be treated as the individual income of the assessee under the appropriate head of income. On a petition for Special Leave to Appeal to the Supreme Court, SLP of the assessee is dismissed. (AY. 2009-10 to 2011-12)

Jose Thomas, Etc. v. PCIT (2024)468 ITR 108 / 301 Taxman 170 (SC)

Editorial : PCIT v. Grancy Babu (2024) 298 Taxman 722 / 471 ITR 377 (Ker)(HC)

18 **S. 4 : Charge of income-tax-Capital or revenue-Sales tax exemption –Notice is issued in SLP filed by the assessee. [U. P. Trade Tax Act, 1948, S. 4A, Art. 136]**

High Court held that the assessee availed exemption from payment of tax under exemption certificate issued under section 4A of U. P. Trade Tax Act, 1948 on turnover of sales and claimed amount representing tax exemption component as capital receipt, since section 4A clearly indicated that exemption from tax on turnover of sales was not a subsidy granted by Government, aforesaid amount of tax component was a revenue receipt in hands of assessee and it could not be treated as capital receipt. Whether in view of fact that issue regarding exemption granted under U. P. Trade Tax, 1948, and effect thereof was pending consideration before this Court in *Tata Steel BSL Ltd. v. CIT* [SLP (C) No(s). 30728–30732 of 2017] notice was to be issued in SLP filed by assessee against impugned order as well as on application for stay.

Birla Corporation Ltd. v. CIT (2024) 299 Taxman 508 (SC)

Editorial : CIT v. Birla Corporation Ltd (2024) 159 taxmann.com 651 (Cal)(HC)

S. 4: Charge of income-tax-Capital or revenue-Subsidy-Sales tax subsidy to be treated as a capital receipt-Department's SLP dismissed. 19

The Delhi High Court relying on various orders had held that the sales tax subsidy received by the assessee has to be treated as a capital receipt and not be added to the income of the assessee. The department filed SLP before the Supreme Court. The Court while dismissing the SLP held that consequent upon holding that the sales tax subsidy receipt by the Assessee was being treated as a capital receipt, the natural consequences as a result of the said declaration would follow. (AY. 2007-08-2010-11)

PCIT v. Sunbeam Auto (P.) Ltd (2024) 297 Taxman 375 / 463 ITR 3 /337 CTR 249 (SC)

Editorial : Sunbeam Auto (P.) Ltd v. PCIT (2020) 116 taxmann.com 763/ (2018) 402 ITR 309 (Delhi))(HC)

S. 4: Charge of income-tax-Club-Bank-Interest-Mutuality-Interest on fixed deposits-Principle of mutuality does not apply to interest income earned on fixed deposit in the banks-Appeal of Revenue is dismissed on account of Monetary limits [S. 268A. Art. 136] 20

Principle of mutuality does not apply to interest income earned on fixed deposit in the banks. Appeal of Revenue is dismissed on account of monetary limits.

CIT v. Noida Golf Course Society (Regd) (2024) 337 CTR 255 (SC)

S. 4 : Charge of income-tax-Capital or revenue-Amount received under non-compete agreement is capital receipt. [S. 28(i)] 21

Dismissing the appeal of the Revenue the Court held that the assessee had been restrained both directly and indirectly from undertaking any business which would compete with the business of WSIL. Clearly, for the period in which the non-compete agreement was to operate, which in this case was ten years, the assessee's source of income had been clamped and, therefore, the compensation received by him is a capital receipt. No substantial question of law. (AY. 1999-20

CIT v. Saeed Mustafa Shervani (2024)471 ITR 777 (Delhi) (HC)

S. 4 : Charge of income-tax-Capital or revenue-Income from other sources Short term deposits-Interest income is set off against expenditure-Deposits and income were inextricably linked with setting up of project, interest income on short-term deposits of funds infused by Government is in nature of capital receipt and not revenue receipt. [S. 56, 145] 22

Assessee-company is a 100 per cent subsidiary company of H, a wholly owned Government enterprise. Government sanctioned certain amount to assessee towards setting up of Integrated Vaccine Complex. Assessee parked certain amounts out of said funds which were not immediately required for construction, in banks and received interest from such short-term deposits. Interest income was set off against expenditure incurred for construction of Integrated Vaccine Complex. Assessing Officer treated interest received as income from other sources. It was noted that in communication from Government of India to assessee it is categorically mandated that funds and income earned out of funds provided by Government was to be utilised only for purpose for which they were released. It is also clarified that any interest income from said funds

consequent on bank deposits, would also be utilised only for purpose of project. Since deposits and income were inextricably linked with setting up of project, interest income on short-term deposits of funds infused by Government was in nature of capital receipt and not revenue receipt. (AY. 2013-14, 2014-15 and 2015-16)
HLL BIOTECH Ltd. v. CIT (2024) 301 Taxman 604 (Ker.)(HC)

23 **S. 4 : Charge of income-tax-Carbon Credit (CER)-Income from realisation of carbon credit is capital in nature-Not assessable as business income. [S. 28(i), 260A]**
Following the judgment in case of *Pr. CIT v. Gujarat Flurochemicals Ltd. [2023] 155 taxmann.com 135/295 Taxman 200/459 ITR 242 (Guj)(HC)* the High Court held that the income from realisation of carbon credit is capital in nature. Order of Tribunal was is affirmed.
PCIT v. Kalpataru Power Transmission Ltd. (2024) 301 Taxman 427 (Guj.)(HC)

24 **S. 4 : Charge of income-tax-Rental income-Property owned by Co-Owners-Association of persons-Maximum marginal rate-Rental income received by co-owners is to be assessed as income from AOP and not in hands of assessee as income from house property under section 22-Order of Tribunal is affirmed. [S. 2(31), 22, 26, 167B(2)(i), 260A]**
Assessee and other co-owners purchased property in their names and thereafter constructed godowns and plinths which were rented out to two companies. Assessee received rental income from these companies and deposited it in a joint bank account held by all co-owners. Assessing Officer assessed rental income received by co-owners as income from AOP under section 4. Tribunal held that the Income was assessable as income of an AOP. On appeal the Court held that rental income being paid by Government companies jointly in hands of co-owners treating them as a single land lord and amount was also being deposited in single account. There was no defined share to rental income and AOP had jointly received income. Accordingly the rental income received by co-owners was to be assessed as income from AOP and not in hands of assessee as income from house property under section 22. (AY. 2005-06)
Y. S. & Co-owners v. ITO [2024] 301 Taxman 647 (P&H)(HC)

25 **S. 4 : Charge of income-tax-Exemption from payment of tax under exemption certificate issued under section 4A of on turnover of sales-Not subsidy-Assessable as revenue receipt. [S. U. P. Trade Tax Act, 1948, S. 4A]**
Assessee availed exemption from payment of tax under exemption certificate issued under section 4A of U. P. Trade Tax Act, 1948 on turnover of sales and claimed amount representing tax exemption component as capital receipt. Assessing Officer treated aforesaid amount of tax component as revenue receipt. Appellate Authority allowed claim of assessee. On appeal by the Revenue the Court held that since section 4A of U. P. Trade Tax Act, 1948 clearly indicated that exemption from tax on turnover of sales was not a subsidy granted by Government and section 4A had not authorised assessee either to collect tax component on exempted sales or to retain it, aforesaid amount of tax component was a revenue receipt in hands of assessee and it could not be treated as capital receipt. (AY. 2001-02 to 2005-06)
CIT v. Birla Corporation Ltd (2024) 159 taxmann.com 632 / 336 CTR 595 (Calcutta) (HC)

S. 4 : Charge of income-tax-Capital or revenue-Subsidy received from Government-Purpose test-Sales-Tax subsidy received from State Government as incentive to set up new unit or large-scale investment in fixed capital-Capital receipt. [S. 28(i), 260A] 26

The Government of Maharashtra to achieve the dispersal of industries outside the Mumbai-Thane-Pune belt and to incentivise the setting up of new and expanded units in underdeveloped and developing areas, had, in 1964, forged a scheme titled "Package Scheme of Incentives". The Package Scheme of Incentives introduced in 1964 underwent changes from time to time. The 1993 Scheme was rooted in the Package Scheme of Incentives put in place by the Government of Maharashtra, as indicated above, in 1964. The 1993 Scheme was forged to achieve three broad objectives : (i) first, to disperse industries outside the now Mumbai-Thane-Pune belt and to attract new and expanded units to developing and underdeveloped areas of the State ; (ii) second, to rationalise incentives accorded by intensifying and accelerating the dispersal of units from developed to underdeveloped and developing areas ; and (iii) third, the development of underdeveloped regions of the State, particularly those which were at some distance from the Mumbai-Thane-Pune belt. Thus, the central theme, object and purpose of the 1993 Scheme was to industrialise underdeveloped and developing areas which fell outside the now Mumbai-Thane-Pune belt by incentivising the setting up of new and expanded units. The common thread running through various incentives provided under the scheme was the setting up of new units or large-scale investment in fixed capital. The fact that the eligibility certificate was to be issued by the agency implementing the scheme after the commencement of commercial production by the eligible unit had been incorporated in the 1993 Scheme to ensure that the object and the purpose of the 1993 Scheme, which was to industrialise underdeveloped and developing areas was fulfilled. Dismissing the appeal of the Revenue the Court held that the assessee was entitled to avail of sales-tax subsidy and incentives under two eligibility certificates dated December 13, 1994 and October 15, 1996 (as amended) for 14 years and 13 years and 11 months, respectively, subject to a maximum entitlement of 110 per cent. of the capital investment made in setting up of the industrial units. A perusal of the eligibility certificate dated December 13, 1994 would show that it was issued for setting up a "new unit", while the eligibility certificate dated October 15, 1996 was given to a "pioneer unit" which had undertaken expansion. The sales tax subsidy or incentive received by the assessee under 1993 Scheme was a capital receipt. (AY. 1997-98, 2005-06, 2006-07, 2008-09, 2013-14, 2014-15)

CIT v. Indo Rama Textiles Ltd. (2024)465 ITR 562 / 337 CTR 159/158 taxmann.com 685 (Delhi)(HC)

S. 4 : Charge of income-tax-Interest-Capital or revenue-Auction sale-Interest against principal amount deposited-Auction sale is nullified by court-Interest is capital receipt and cannot be assessed as income from other sources. [S. 56(2)(viii)] 27

Assessee deposited principal amount pursuant to auction sale. However, said auction was eventually nullified by court. High Court directed for refund of whole amount deposited by assessee along with interest accrued thereon. Assessing Officer made addition on account of amount of interest received by assessee under section 56(2)(viii) of the Act. CIT(A) affirmed the order of the Assessing Officer. Assessee contended that

said amount of interest was in nature of capital receipt not chargeable to tax. Tribunal held that principal amount could not be characterized as compensation granted by Court on account of cancellation of auction. Rather, such an amount was a bonafide amount of successful auction bidder, which he had deposited against purchase of land. Amount so received by assessee was entitlement of successful bidder which was given back to assessee vide an order of Court. Thus, when amount was not in nature of compensation, then, as a natural corollary, interest accrued on said amount could not tantamount to revenue receipts, and hence, same could not be subjected to tax as per section 56(2)(viii) of the Act. On appeal by Revenue High Court affirmed the order of the Tribunal. (AY. 2012-13)

PCIT v. INS Finance & Investment (P.) Ltd. (2024) 299 Taxman 131 / 340 CTR 602/(2025) 475 ITR 83 (Delhi)(HC)

28 **S. 4 : Charge of income-tax-Subsidy-Capital or revenue-Bengal Incentive Scheme, 2004-Linked to establishment of new units-Capital in nature. [S. 28(i)]**

Assessee received subsidies from Govt. of West Bengal under West Bengal Incentive Scheme, 2004 for industrial projects. The Assessing Officer held that subsidy is revenue receipts. On appeal the Tribunal treated subsidy as capital in nature, intended for industrialization, and not taxable as revenue receipts. Tribunal also held that as per provisions of Industrial Promotion Assistance Scheme as framed by State of West Bengal, receipt of subsidies was clearly linked to a total investment exceeding INR 25,00,00,000 being made and would have become payable on commencement of commercial production. Affirming the order of the Tribunal the Court held that since, subsidy being clearly linked to establishment of new units, it would be treated as capital in nature. As regards the issue of Advertainment, Marketing and Promotion ("AMP"), the appeals would be re-notified, since both sides seek an opportunity to address submissions in greater detail.

PCIT (Central) v. Pepsico India Holding (P.) Ltd. (2024) 299 Taxman 309 (Delhi)(HC)

29 **S. 4 : Charge of income-tax-Income –Redevelopment agreement-Amount paid to members of society-Members offered the amount for taxation-Not taxable in the assessee society-Possession not given-Not taxable as capital gain in the year under consideration. [S. 2(24), 5, 45, 56 260A]**

The assessee-society owned certain residential flats. The plot of land on which the said flats were constructed was held by the assessee as a lessee under a long-term lease. The assessee along with its members decided to redevelop the flats by demolishing the old flats and constructing new flats. Accordingly it entered into redevelopment agreement with one developer, whereby it granted rights and entitlements to the developer for the aforesaid land. The members of the society agreed to transfer their old flats to the developer. The developer, in turn, agreed to pay a certain amount to each member of society apart from a certain amount to the corpus fund of assessee. The payment was in addition to the flats and parking spaces to be constructed and handed over to the members. The Assessing Officer taxed the amount received by the members from the developer in the hands of the assessee. The Commissioner (Appeals) partly allowed the appeal of the assessee. The Tribunal, on appeals filed by both the assessee and

the revenue, held that the facts in the instant case were almost similar to the facts in the case of *CIT v. Raj Ratan Palace Co-operative Housing Society Ltd. [IT Appeal No. 2292 of 2011, dated 27-2-2013 (Bombay High Court)]* and relying on the said judgment concluded that as the members of the society had offered the amount received by them from the developer for taxation, the Commissioner (Appeals) was not justified in taxing the aforesaid amount to some extent in the hands of the assessee, as the same was the income of the members. It accordingly allowed the appeal of the assessee and dismissed the appeal of the revenue. Dismissing the appeal the Court held that the revenue is not even questioning the finding of the Tribunal that the facts in the case at hand were almost similar to the facts in the case of Raj Ratan Palace CHS (supra). Further against the above order of the High Court, the revenue had preferred a Special Leave Petition in the Apex Court, which came to be dismissed. Followed, *CIT v. Raj Ratan Palace Co-Operative Housing Society Ltd, ITA No. 2292 of 2011 dt. 27-2. 2013 (Bom)(HC))* (AY. 2011-12)

PCIT v. MIG Co-op. Hsg. Soc. Group II Ltd. (2024) 298 Taxman 284 / 467 ITR 524 (Bom.) (HC)

S. 4 : Charge of income-tax-Consideration received for relinquishment of trustee ship-Not capital in nature-Assessable as income-Reimbursements of certain sum for construction expenses-Not taxable in the hands of trustees-Not taxable in the hands of trustees-Donations were received by trusts-Not taxable in the hands of the Trustees. [S. 132, 260A] 30

Assessees were trustees of certain educational trust. Said trust was taken over by certain church and assessees relinquished trusteeship of said trust in favour of trustees of said church, and received consideration for same. The Asseessing Officer assessed the receipt as income. CIT(A) confirmed the addition. Tribunal deleted the addition. On appeal the Court held that since no power was conferred on trustees to relinquish their position as trustees en banc, therefore, en banc resignation/relinquishment by assessees, of their position as trustees of Trust, that too for a consideration, could not get imprimatur of this Court. Therefore, consideration received for such relinquishment would not qualify as a capital receipt and would be treated as individual income of assessees. Assessing Officer held that assessees had received reimbursements of certain sum for construction expenses and brought same to tax in their individual hands. On appeal, Commissioner (Appeals) held that evidence obtained in course of search proceedings revealed that no construction work had actually been undertaken by said assessees or any of trustees, and hence, payments shown as contractual receipts were nothing but payments received for voluntary relinquishment of trusteeship. On appeal Tribunal held that there was construction activity carried out by those two assessees as evidenced by agreements and construction was reflected in balance sheet of assessees which was subjected to TDS and it could not be said that payments were not made towards construction of building which was for establishment of educational institution. On appeal the Court held that since Tribunal had relied on audited balance sheet of church and TDS payments made to Department in relation to said payments, the order of Tribunal is affirmed. Donations were received by certain trust in which assessees were trustees. AO taxed same in hands of assessees. CIT(A) affirmed the Order of the Assessing Officer. Tribunal deleted the

addition. On appeal the Court held that payments were actually made to trust and not to trustees in their individual names and therefore, same could not be taxed in hands of assessees. (AY. 2009-10 to 2011-12)
PCIT v. Gracy Babu (2024) 298 Taxman 722 /471 ITR 377 /341 CTR 630 / 243 DTR 65 (Ker.)(HC)
Editorial : SLP of assessee is dismissed, Jose Thomas, Etc. v. PCIT (2024) 468 ITR 108 / 301 Taxman 170 (SC)

31 **S. 4 : Charge of income-tax –Sales tax incentive-Capital receipt-Not chargeable to tax. [S. 260A]**
Held that the sales tax incentive received by the assessee, a manufacturer, from the Government, as a refund of sales tax paid on goods manufactured is a capital receipt and not chargeable to tax. (AY. 2009-10)
PCIT v. Shantinath Detergents (P.) Ltd [2023] 151 taxmann. com 68 / [2024] 461 ITR 302 (Cal)(HC)

32 **S. 4 : Charge of income-tax-Diversion of income by overriding title-Amounts transferred to statutory reserve fund-Amounts received and then transferred-No diversion of income by overriding title. [S. 145]**
Held that the amount transferred to the statutory reserve fund was received and then reflected as part of the total income, and hence deduction was not permissible. The authorities below were justified in disallowing the deduction claimed by the assessees for the amount transferred to the reserve fund in compliance with the mandatory provisions of the Reserve Bank of India Act. (AY. 2003-04 to 2014-15)
Shriram Transport Finance Co. Ltd. v. ITO (OSD) (2024)460 ITR 66 (Mad)(HC)

33 **S. 4 : Charge of income-tax-Notional income-Credited to profit and loss account-Accounting standard (Ind AS)-Cannot be assessed as real income. [S. 143(1)(a), 154]**
Held that tax notional income credited to profit and loss account in compliance of Indian Accounting standard (Ind AS) cannot be assessed as real income in absence of contractual obligation of repayment. (AY. 2018-19) (ITA No. 3001 dt. 8-3-2024)
ACIT v. Kesar Terminals and Infrastructure Ltd (2024) BCAS-June-P. 41 (Mum)(Trib)

34 **S. 4 : Charge of income-tax- Pollution Control Board established by State Act-Controlled financially as well as administratively by the State Government -On winding up the funds would revert to the State Government-Income is not taxable. [The Orissa Water (Prevention and Control of Pollution) (Amendment) Act, 1974, S. 4(1), Art. 12, 289(1)]**
Tribunal held that the Assessee Board constituted under sub-s. (1) of S. 4 of the Orissa Water (Prevention and Control of Pollution) (Amendment) Act, 1974, is completely controlled financially as well as administratively by the State Government and consequently, it falls within the definition of 'State' under Art. 12 of the Constitution and its income is not liable for taxation as per the provisions of Art. 289(1). (AY. 2017-18)
State Pollution Control Board v. ITO (2024) 232 TTJ 887 (Cuttack)(Trib)

S. 4 : Charge of income-tax-Interest on deposits of grants received by nodal agency of Government-Issue is remitted back to the AO to ascertain whether the interest income has been remitted back; if the entire interest income has been remitted back to the Central Government/State Government, then no addition is sustainable on account of the interest income earned on the deposits. [S. 5] 35

Held that interest earned by the assessee nodal agency of the Central/State Government, on bank deposits of grants is immediately returned to the Central Government. In case of Central Government funds and interest received on State Government fund is adjusted against subsequent grant, Issue is was remitted back to the AO to ascertain whether the interest income has been remitted back; if the entire interest income has been remitted back to the Central Government/State Government, then no addition is sustainable on account of the interest income earned on the deposits. (AY. 2017-18, 2018-19)

ITO v. Managing Director, Davanagere Smart City Ltd. (2024) 232 TTJ 64 (UO) (Bang) (Trib)

S. 4 : Charge of income-tax-Accrual of income-Commission-Service charges receivable from State Government-Auditors report stating under reporting of income-Liable to be taxed on accrual basis. [S. 5, 145] 36

Held that when the assessee's chartered accountant in his audit report dt. 21st Sept., 2012 has categorically stated that the bank has understated its profit, the commission due to the assessee on account of service charges is assessable on accrual basis. Order of CIT (A) deleting the addition is set aside, order of the AO is affirmed. (AY. 2012-13)

ACIT v. Jila Sahakari Kendriya Bank Maryadit (2023) 37 NYPTTJ 962 / (2024) 229 TTJ 415 / 241 DTR 233 / (Raipur)(Trib)

S. 4 : Charge of income-tax-Capital or revenue-Interest subsidy-Technology upgradation fund scheme-Ground raised first time-Issue is restored to the AO for fresh adjudication as per provisions of law [S. 2(24)(xviii)] 37

Held that interest subsidy received under Technology Upgradation Fund Scheme is a capital receipt not chargeable to tax, issue being raised by the assessee by way of additional ground of appeal is restored to the AO for fresh adjudication as per provisions of law. Followed, *Dy. CIT v. Jindal Worldwide Ltd. (ITA No. 1843/Ahd/2016)* (AY. 2014-15)

Chirpal Industries Ltd. v. Dy. CIT (2024) 229 TTJ 87 (UO) (Ahd)(Trib)

S. 4 : Charge of income-tax-Capital or revenue-Business income-Compensation-Other payments-Income chargeable to tax-Compensation for termination (nonrenewal) of professional contract-Profession-Retrenchment-Freelance journalist-Compensation being capital receipt is not taxable. [S. 4, 28(ii)(e),32(1)(iv), 56(2)(xi), Industrial Relations Code, 2020, S. 2(ZA)] 38

The assessee has received compensation from Spiegel Verlag Spiegel Publishers which she claimed as exempt under section 4 of the Income tax Act. The AO held that the compensation is taxable as business income under section 28(ii)(e) of the Act read with Board Circular No. 8 /2018 dt. 26 December, 2018 (2019) 306 CTR 21 (St). The AO also held that said compensation is also taxable under section 56(2)(xi) of the Act. CIT(A) affirmed the order of the AO. On appeal the Tribunal held that as per section 28(ii)(e),

the compensation for termination compensation received by any person on termination or modification of the terms and conditions of any contract relating to his business is taxable under the head Profits and gains of business or profession. Wherever the legislature thought of referring to both business and profession, it has used both the words in the enactment. This means that wherever the word only business is used, it does not include profession. The reference to business in S. 28(ii)(e) would not amount to reference to profession. On the facts of the case the assessee is a freelance journalist. Relevant clauses of the agreement refer to renewal of the agreement. Since the contract was not renewed, it came to an end. Compensation was received by the assessee by way of mutual agreement between Spiegel Verlag Spiegel Publishers and the assessee. As per S. 2(zh) of the Industrial Relations Code, 2020, non-renewal of any contract does not amount to retrenchment. Therefore the compensation received by the assessee is not taxable under S. 28(ii)(e). In S. 56(2)(xi) the reference is to termination of employment. This section is also not applicable on the facts of the case. Followed *G. K. Choksi & Co. v. CIT (2007) 213 CTR 431 / 295 ITR 376 (SC)*. Accordingly the compensation being capital receipt is not taxable. (AY. 2020-21)

Padma Rao (Ms.) v. CIT (2024) 159 taxmann. com 30 /228 TTJ 109 / 235 DTR 193 / 38 NYPTTJ 136 (Delhi) (Trib)

39 **S. 4 : Charge of income-tax-Subscription received by assessee from members towards holidays membership schemes-Entries in the books of account is not conclusive-Collective investment schemes(CIS)-Advances for sales-Deposits-The deposits received from the members cannot be treated as revenue receipt-Capital receipt. [S. 40(a)(ia), 145, 194A, 195]**

The assessee is involved in the business of selling holiday membership plans to its members. It had certain affiliation with certain hotels which provided accommodation to its members. Securities and Exchange Board of India (SEBI) vide order dt. 21 st August, 2015 held that schemes floated and prescribed by the assssee constitute Collective Investment Schemes (CIS). Only 2% of the members /investors have availed of the holiday facilities other 98% investors who have invested money with the sole motive of receiving the assured returns in the form of interest. The assesee has not deducted the tax at source. The AO assessed the deposit as income and also disallowed the interest for failure to deduct tax at source. CIT(A) affirmed the order of the AO. On appeal the Tribunal held that the schemes floated by the assessee were held to be in the nature of CIS and therefore, the NAC paid by the assessee to its members was considered as interest on deposits, such deposits by the members cannot be treated as revenue in the hands of the assessee. The deposits received from the members cannot be treated as revenue receipt in the hands of the assessee. Tribunal also held that it is trite law that entries in the books of account are not decisive or determinative of the true nature of the entries. Accordingly the amount received by the assessee from its members, to the extent the same is treated as income in its books of account, is directed to be reduced while calculating the total income of the assessee. (AY. 2009-10 to 2015-16)

Royal Twinkle Star Club (P) Ltd. v. DCIT (2023) 152 taxmann. com 374 / 37 NYPTTJ 334 / (2024) 228 TTJ 991 (Mum) (Trib)

S. 4 : Charge of income-tax-Capital or revenue-Sale of hotel asset Adjusted against capital work-in-progress-Not business income-No violation of Rule 46A-Commissioner (Appeals) is justified in deleting addition. [S. 28(1), R. 46A] 40

Held that as the information was available before the Assessing Officer, there could not be any violation of rule 46A ; secondly, the sum was received on account of capital receipt on sale of hotel assets and could not be treated as business asset. Such amount represented sale consideration as against sale of capital asset and should be adjusted against capital work-in-progress and not be treated as business income. The Order of CIT(A) is affirmed. (AY. 2008-09 to 2010-11)

ACIT v. Balaji Hotels and Enterprises Ltd. (2024)114 ITR 213 /229 TTJ 567/239 DTR 189 (Chennai)(Trib)

S. 4 : Charge of income-tax-Capital or revenue-Sales tax subsidy-Additional ground is admitted-Matter remanded-Exempted income-Disallowance-Matter remanded. [S. 28(1), 254(1)] 41

The additional ground whether sales tax subsidy is capital receipt or revenue receipt was admitted and the matter remanded for verification. As regards disallowance under section 14A the matter was remanded to the Assessing Officer. (AY. 2007-08 to 2009-10)

ACIT v. Jindal Poly Films Ltd. (2024)114 ITR 72 (SN)(Delhi)(Trib)

S. 4 : Charge of income-tax-Central excise subsidy from Central Government-Subsidy granted for setting up new unit in Sikkim-Capital receipt-Not liable to tax. [S. 28(i)] 42

Central excise subsidy from Central Government. Subsidy granted for setting up new unit in Sikkim is a capital receipt and is not liable to tax. (AY. 2009-10 to 2012-13, 2014-15)

IPCA Laboratories Ltd. v. Dy. CIT (2024)113 ITR 53/230 TTJ 409 (Mum)(Trib)

S. 4 : Charge of income-tax-A Government undertaking, nodal agency for propagation of non-conventional energy sources-Grants-in-aid from Government-Unutilised grants-in-aid placed in fixed deposit with banks-Interest earned is not income as unutilised grant-in-aid was also a part of grant-in-aid-Precedent-High Court-Fact that judgment of High Court is under challenge before Supreme Court is cannot be a ground for Tribunal not to follow it. [S. 260A Art. 136] 43

Held that the interest earned from the unutilised grant-in-aid is also a part of the grant-in-aid and was not income under the provisions of the Act, and there being no materials to take a different view, the order of the Commissioner (Appeals) is affirmed. Fact that judgment of High Court is under challenge before Supreme Court is cannot be a ground for Tribunal not to follow it. (AY. 2020-21)

ACIT v. Karnataka Renewable Energy Development Ltd. (2024)113 ITR 9 (SN)(Bang)(Trib)

S. 4 : Charge of income-tax-Doctrine of mutuality-Club-Complete identity between contributors and participators of funds-Letting out Air-conditioned hall and lawns to non-members-Member was only a name lender-Usage of Air-conditioned hall and lawns facility by non-members are not covered by principle of mutuality-Income from such activity is not exempt. [S. 143(3)] 44

Held that the facts were that the booking was done in the name of the member clearly mentioning the fact of the usage of facility by an outsider or non-member, the liability

for payment for the usage of the facility was raised in the account of the member, and the facility was utilised by non-members or guests, and payment also was made by the guests or non-members. The fact that the non-members paid for the usage of these facilities was a clear pointer to the fact that the facility was given to the non-members not on behalf of the members as their guests but for the benefit of the non-members alone. Clearly the member was only a name lender, a conduit. His role ended with the lending of his name, the facility was thereafter utilised by non-member on making payment. The mere fact that the club held the member liable for making the payment, did not take away the fact that in every such letting out to non-members, the payment invariably was made by the non-members. There was no doubt, therefore, that the letting out of these facilities to non-members was not for the contributors in the common fund of the assessee club. In other years, before the Tribunal, it was noted that the facilities had been extended to the non-members on the behest of the members as his guests and the fact that the payment was being made by non-members was not brought to the knowledge of the Tribunal ; and, therefore, it proceeded with the belief that the extension of the facility to non-members was for and on behalf of the members itself. Since the facility was not being given to the non-members for and on behalf of the member, but was being exclusively given to the non-members alone, the usage of the air-conditioned hall and lawns facility by non-members in the facts of the present case was not covered by the principle of mutuality. (AY. 2008-09, 2012-13, 2013-14, 2015-16)
Rajpath Club Ltd. v. Asst. CIT (2024)113 ITR 45 (SN)(Ahd)(Trib)

45 **S. 4 : Charge of income-tax-Accrual of income-Bank-Guarantee commission-Earned for unexpired period of guarantee contract-Offered to tax in succeeding years over period of guarantee-Interest from non-performing assets-Addition is deleted. [S. 4, 43D, R,6EA]**
The Assessing Officer had made an addition of the commission earned on guarantee issued by the bank relating to the unexpired period of the guarantee contract during the year but offered to tax by the assessee in succeeding years over the period of the guarantee. Likewise, an addition was also made on account of interest income on non-performing assets. The Dispute Resolution Panel, though noting that an identical addition of commission income made in the preceding years stood deleted by the Tribunal, directed the Assessing Officer to make the addition for the reason that the Department had appealed the Tribunal's decision before the High Court. Neither the Dispute Resolution Panel, nor the assessee, had brought out any distinction in facts from the preceding years. Therefore, as there was no case made out by the Revenue for not applying the Tribunal's decision in favour of the assessee, the addition of commission income and of interest income from non-performing assets is directed to be deleted. (AY. 2018-19)
Axis Bank Ltd. v. Asst. CIT (2024)112 ITR 28 (Ahd)(Trib)

46 **S. 4 : Charge of income-tax-Income-Accrual-Interest on non-performing asset-Deletion of addition is affirmed. [R. 6EA]**
The Assessing Officer made additions towards interest accrued, but not due of non-performing assets on the ground that non-performing assets should be classified according to rule 6EA of the 1962 Rules, which says that an account could be treated

as non-performing asset only if the interest was overdue for more than six months. The Commissioner (Appeals) deleted the additions. On appeal the Tribunal affirmed the order of the CIT(A) (AY. 2015-16 to 2017-18)
City Union Bank Ltd. v. Dy. CIT (2024)112 ITR 337 /229 TTJ 139 (Chennai)(Trib)

S. 4 : Charge of income-tax-Interest on fixed deposit-Not commenced its business-Interest income earned on fixed deposits pertaining to period prior to commencement of business was in nature of capital receipt. [S. 28(i), 35D] 47
Held that where assessee-company had not commenced its business activities during relevant financial year and earned interest income on fixed deposits made by it in earlier years, interest income earned on fixed deposits pertaining to period prior to commencement of business was in nature of capital receipt and pre-operative expenses of assessee had to be adjusted with this "capital receipt" and only balance expense, needed to be amortized as per provisions of section 35D. (AY. 2015-16)
DCIT v. BTW Atlanta Transformers India (P.) Ltd. (2024) 206 ITD 670 (Ahd) (Trib.)

S. 4 : Charge of income-tax-Insurance claim-Capital or revenue-Interim order-Matter remitted back to Assessing Officer to decide a fresh. [S. 28(i)] 48
Assessee had made a claim with insurance company on basis of insurance cover purchased by it in respect of its corporate office where fire took place and had received interim claim of Rs. 2. 75 crores and it had incurred loss. Assessing Officer had treated payment received by assessee as insurance claim on ad hoc basis and taxed same under head business or profession. Commissioner (Appeals) held that amount received by assessee was revenue receipt taxable under head business or profession. On appeal the Assessee contended that since assessee had ultimately incurred a loss, said receipt could not be taxed in its hand as revenue receipt. Tribunal held that since assessee did not produce evidence regarding loss incurred by it due to accidental fire, issue was to be remitted back to Assessing Officer to decide afresh for on verifying actual loss incurred by assessee. (AY. 2005-06)
Piramal Enterprises Ltd. v. DCIT (2024) 205 ITD 636 /116 ITR 261 (Mum) (Trib.)

S. 4 : Charge of income-tax-Capital or revenue-Premature payment of deferred sales tax at present value of certain amount against total liability and credited balance amount to its capital reserve account-Amount credited amount is a capital receipt. [S. 28(i)] 49
Held that payment made premature payment of deferred sales tax at present value of certain amount against total liability and credited balance amount to its capital reserve account, said credited amount is a capital receipt not a revenue receipt. (AY. 2005-06)
Piramal Enterprises Ltd. v. DCIT (2024) 205 ITD 636 / 116 ITR 261 (Mum) (Trib.)

S. 4 : Charge of income-tax-Capital or revenue-Subsidy-Subsidy received by assessee from State Government under Package Scheme of Incentives, 2007 to encourage setting up of industries in less developed areas of State and not for purpose of running business more profitably is capital in nature. [S. 28(i)] 50
Held that subsidy received by assessee from Government under Package Scheme of Incentives, 2007 was only to encourage setting up of industries in less developed areas

of State and same is not for purpose of running business more profitably, same is to be treated as capital in nature. (AY. 2014-15)
Asian Paints Ltd. v. ACIT (2024) 205 ITD 680 (Mum) (Trib)

51 **S. 4 : Charge of income-tax-Capital or revenue-Grant-Electricity grants received by assessee from State Government under Industrial Policy, 2005 for setting up a project for manufacturing of paints is capital in nature.**
Assessee is engaged in business of manufacturing paints and enamels. Electricity. Grants received by assessee from State Government under Industrial Policy, 2005 for setting up a project for manufacturing of paints is capital in nature. (AY. 2014-15)
Asian Paints Ltd. v. ACIT (2024) 205 ITD 680 (Mum) (Trib)

52 **S. 4 : Charge of income-tax-Interest income-Temporarily parked / deposited with banks on fixed deposits-Prior to commencement of business-Capital receipt-Required to be set off against pre-operative expenses. [S. 145]**
Held that interest income was earned by assessee on fund which was temporarily parked/deposited with banks as fixed deposits prior to commencement of its business, it was in nature of a capital receipt and is required to be set off against pre-operative expenses. (AY. 2013-14)
Chandhok Cold Storage (P.) Ltd. v. ITO (2024) 204 ITD 17 /227 TTJ 744 (SMC)) (Raipur) (Trib.)

53 **S. 4 : Charge of income-tax-Capital or revenue--Income-Member of Society-Hardship compensation amount received from builder is capital receipt-Not taxable as income from other sources. [S. 2(24), 56]**
The assessee is a tuition teacher by profession. The assessee received hardship compensation from the developer. The assessee has shown the said receipt as capital receipts. The Assessing Officer assessed the receipts as income from other sources. On appeal the CIT(A) affirmed the order of the Assessing Officer. On appeal the Tribunal held the assessee has received the amount from builder and the same will not come under the purview of the income within the meaning of section 2(24) of the Act. The hardship compensation is a capital receipt hence not taxable. The Tribunal has relied on various judgements of the Tribunal and deleted the addition. (AY. 2012-13, 2015-16, 2016-17) (ITA Nos. 1081/ 1082/ 1083 /2024 (Mum) "D" dt. 23-9-2024)
Monica Parmanand Mirchandani v. ITO (Mum)(Trib) www.itatonline.org

54 **S. 5 : Scope of total income – Accrual of income – Termination of lease – Pendency of dispute before Small Causes Court – Deposit of lease rent in Court - Revenue was not justified in taxing lease rent as accrued income .[S. 4, 5(1)(b), 145]**
Where the assessee had terminated the sub-lease and filed a suit for eviction, while the tenant also filed a cross-suit, the Small Causes Court permitted the tenant to deposit lease rent in Court without prejudice to the rights of either party. Since the dispute regarding the subsistence of lease was sub judice and the assessee had not accepted rent after termination, the right to receive rent was in jeopardy. Income could not be said to have accrued to the assessee till final adjudication by the Court. Hence, the

Revenue was not justified in taxing lease rent as accrued income. (AY. 1986-87 to 1991-92, 1993-94)
T. V. Patel Pvt. Ltd. v. Dy. CIT (2024) 464 ITR 409 / 336 CTR 136 (Bom)(HC)
Editorial : Unless the right to receive is crystallized and enforceable, mere deposit of rent in Court does not amount to accrual of income.

S. 5 : Scope of total income-Accrual of income-Charge of income-tax-Real income-Redevelopment agreement-Corpus fund received prior to giving possession of land to developer-Capital gains-Not taxable in the year under consideration. [S. 2(24), 4, 45, 56, 260A] 55
Assessee-society owned certain flats, which were constructed on leasehold land-It entered into redevelopment agreement with a developer to redevelop flats and granted rights and entitlements to developer for aforesaid land. Developer agreed to pay Rs. 15 crores to corpus fund of assessee and an amount of Rs. 3.50 crores was paid on execution of agreement. Assessing Officer held that amount of Rs. 15 crores was just a receipt of non-recurring nature and taxed entire amount under head income from other sources during year under consideration. Dismissing the appeal of the Revenue the Court held that since assessee had not given possession of land to developer during year under consideration amount of Rs. 3.50 crores (real income) only could be taxed for year under consideration. Followed, *CIT v. Raj Ratan Palace Co-Operative Housing Society Ltd, ITA No. 2292 of 2011 dt. 27-2. 2013 (Bom)(HC))* (AY. 2011-12)
PCIT v. MIG Co-op. Hsg. Soc. Group II Ltd. (2024) 298 Taxman 284 /467 ITR 524 (Bom.) (HC)

S. 6(1) : Residence in India-Individual-Indian citizen-Stayed in India more than 183 days-Income derived in USA is chargeable to tax in India-DTAA-India-USA. [S. 5, 9(1)(i), Art. 4(2)(a)] 56
Assessee had a permanent home in India as well as in USA. Assessee claimed that his centre of vital interest lay in USA as his family was US national holding US passport, he was overseas citizen of India, had larger investments in US and one daughter out of three children was studying in USA. Assessing Officer held that assessee had stayed in India for more than 183 days and he was staying with his wife and children who had shown their place of residence as India. He treated assessee as resident of India for tax purposes and his US income was also taxed in India under section 5. CIT(A) up held the order of the AO. On appeal the Tribunal held that the assessee had a home in India. Assessee had come back to India for carrying on business in a private limited company which was set up by him and his wife. Assessee had an active involvement in running of this company in India. In India he had operative bank accounts and he had also investment in mutual funds. From USA, assessee was deriving rental income where his house property was rented out, he had investments in bank accounts as well as alternative investments. He did not have any active involvement in USA for earning wages, remuneration, profit Personal relationship and economic relationship of assessee and tilt more in favour of being close to India than US and thus, assessee was held as a resident of India in terms of article 4(2)(a) of Indo-(USA). Consequently, all his income derived in USA, was chargeable to tax in India by virtue of provisions of section 5. (AY. 2013-14)
Ashok Kumar Pandey v. ACIT (2024) 209 ITD 274 (Mum) (Trib.)

57 **S. 6(1) : Residence in India-Individual-Non-Resident-Once assessee qualifies as non-Resident salary received by assessee while rendering service abroad not taxable in India-DTAA-India-United Kingdom. [S. 5(2)(b), Art, 16]**

Held Allowing the appeal, the Tribunal held that the assessee was a non-resident employee in an Indian company and was sent abroad to the United Kingdom for rendering services there. Service was rendered in the United Kingdom though the appointment made in India. The assessee received total salary which the assessee offered to tax in the United Kingdom. The Income-tax return and certificate of residence had been placed on record. The assessee claimed relief under the Double Taxation Avoidance Agreement between India and the United Kingdom which was not allowed for the want of tax residency certificate by the Assessing Officer. Once the assessee qualified to be treated as non-resident under section 6 of the Act the scope of income taxable in the hands of the assessee would be in terms of section 5(2)(b) of the Act. The assessee was a non-resident and therefore the salary received by the assessee while rendering service abroad was not taxable in India. The addition was deleted. (AY. 2014-15)

Arindam Dasgupta v. Asst. CIT (IT) (2024)110 ITR 57 (SN)(Kol)(Trib)

58 **S. 6(1) : Residence in India-Individual-Income from employment-Salary payments outside India-Exercised employment and received remuneration in US-Salary income is taxable in USA and not in India – India-USA. [S. 9(1)(i), 90(4), Art. 4, 16]**

Assessee, a tax resident of both India and US, employed with Indian-company was on an international assignment to US. He stayed and exercised his employment in US and received salary income. He claimed that as he had stayed in India only for 16 days, salary income earned by him was not taxable in India but was taxable in USA as per provisions of article 16 of Indo-US DTAA. Assessing Officer placing reliance on provisions of section 90(4) rejected assessee's claim of exemption from taxation of salary in India and made an addition of same. CIT(A) held that the remuneration was paid by the employer who was is always a resident of India and therefore, the assessee's salary was taxable in India. On appeal the Tribunal held that the assessee had not made any submissions relating to status of assessee of cumulative stay of less than 365 days in four years preceding year in question, therefore, assessee by virtue of provisions of section 6(1) had failed to establish his status of non-resident. During year, assessee did not have permanent home in US, whereas, he had a permanent home in India. The Assesseee is in permanent employment of Indian-company and bank account of assessee i also in India, wherein, salary is deposited. Address of wife of assessee mentioned in income tax return filed in USA for year 2019 is also in India. In view of provisions of section 6 read with article 4 of Indo-US DTAA, assessee is to be treated as a resident of India. Since assessee is a resident of India, however he had exercised employment and received remuneration in US, income of assessee is taxable in USA and not in India. Therefore, additions made by Assessing Officer is deleted. (AY. 2019-20)

Somnath Duttagupta v. ACIT (2024) 111 ITR 385 / 206 ITD 317 /229 TTJ 84 (Kol) (Trib.)

S. 6(1) : Residence in India-Individual-Employment outside India-Business or profession-Term employment outside India includes doing business' by assessee-Stayed in India for a period of 176 days-Non-resident-Global income is not taxable in India-Stayed 176 days during year-Entitled to claim the benefit of the extended period of 182 days as provided in explanation 1(a) to section 6(1) of the Act-Appeal of Revenue is dismissed-DTAA-India-Mauritius. [S. 6(1)(a), (6(1)(c), Art. 4] 59

During the assessment proceedings, on perusal of the return of income filed by the assessee, it was observed that the assessee had claimed his residential status as non-resident and had not offered his global income to tax in India. Assessee was asked to furnish documents in support of his residential status. On the basis of documents it was observed that the assessee stayed in India for 176 days and went to Mauritius during the year. The AO assessed the assessee as resident. On appeal the CIT(A) held that the assessee was away from India for the purpose of employment outside India and is entitled to take the benefit of Explanation 1(a) to section 6(1)(c). On appeal by the Revenue, dismissing the appeal the Tribunal held that the assessee was entitled to claim the benefit of the extended period of 182 days as provided in explanation 1(a) to section 6(1) of the Act. Circular No 346 dt. 30-6-1982 (AY. 2013-14)

ACIT v. Nishant Kanodia [2024] 205 ITD 20/109 ITR 50 (SN)/ 227 TTJ 625 (Mum) (Trib)

S. 9(1)(i): Income deemed to accrue or arise in India-Business connection-Liaison Office-Non-Resident company-Did not finalize and transact a business deal and activities-Liaison Office could not be said to be preparatory or auxiliary in nature, LO did not constitute Permanent Establishment of assessee-MIPL was not performing additional function, in absence of material, it could not be taken as Dependant agency PE to assessee, a non-resident company-Delay of 395 days-SLP of Revenue is dismissed on account of delay as well as on merits-DTAA-India-Japan. [Art. 5, Art. 136] 60

High Court held that where Liaison Office (LO) of assessee, a non-resident company, did not finalize and transact a business deals and activities carried out by LO could not be said to be preparatory or auxiliary in nature, LO did not constitute a Permanent Establishment, liable to tax in India.. High Court also held that where MIPL was not performing additional function, in absence of material, it could not be taken as dependant agency PE to assessee liable to tax in India. There being gross delay of 395 days in filing this SLP, instant SLP was to be dismissed on ground of delay as well as on merits.

CIT v. Mitsui & Co. Ltd. (2024) 299 Taxman 365(SC)

Editorial : CIT (IT) v. Mitsui & Co. Ltd (2024) 161 taxmann.com 634 (Delhi) (HC)

S. 9(1)(i): Income deemed to accrue or arise in India-Business connection-No conflict between provision of DTAA between India and Netherlands-Non-discrimination and there was no ambiguity in classification and rates of tax, assessee, which is not a 'domestic company', is liable to tax at rates prescribed for a company 'other than a domestic company'-DTAA-India-Netherlands. [S. 2(17), 2(23A), 90, Art. 24(2)] 61

Assessee is a branch of ABN Amro Bank NV incorporated in Netherlands with limited liabilities having its original office at Singapore. In India, assessee is registered as a scheduled bank in terms of Second Schedule to RBI Act, 1934 Since assessee had a PE in India, it was liable to tax in respect of income attributable to PE. Held that in

terms of Article 24(2) of DTAA between India and Netherlands, containing provision of non-discrimination, assessee is liable to Income Tax at rate applicable to a domestic company. It was found that Explanation to section 90 is not in conflict with provisions of DTAA and that there is no conflict between provisions of DTAA and Income-tax Act, 1961 regarding non-discrimination. Further, section 2(17) defining word 'Company', section 2(22A) defining word 'Domestic Company', section 2(23A) defining word 'Foreign Company', and section 90 of Act, 1961 read with Explanation and section 2(1), section 2(12)(a), Paragraph 'E' of First Schedule to Finance Act are plain, unambiguous and lead only to one conclusion that two classes of companies, namely, 'domestic company' and 'company other than a domestic company' are liable to tax at prescribed rates. Therefore, there being no ambiguity in classification and rates of tax, assessee, which was not a 'domestic company', was liable to tax at rates prescribed for a company 'other than a domestic company'.

Royal Bank of Scotland N. V. v. CIT (2024) 341 CTR 981 / 162 taxmann.com 780 (Cal) (HC)

62 **S. 9(1)(i): Income deemed to accrue or arise in India-Business connection-Fees charged by foreign branch for providing and extending a credit line to account holder outside India in respect of credit cards issued by foreign branch and used in India is not taxable in India-Order of Tribunal is affirmed. [S. 260A]**

Held that credit cards had been issued by foreign branch of assessee-bank and credit was given to customer outside India and debt had also arisen outside India, fees charged by foreign branch for providing and extending a credit line to account holder outside India in respect of credit cards issued by foreign branch and used in India would not be taxable in India. Order of Tribunal is affirmed. (AY. 1992-93, 1994-95, 1995-96)

DIT v. ANZ Grindlays Bank (2024) 301 Taxman 599 / (2025) 476 ITR 624 (Delhi)(HC)

63 **S. 9(1)(i): Income deemed to accrue or arise in India-Business connection –Permanent Establishment-Apportionment of income-Where an assessee had a Permanent Establishment in India, it would be liable to pay tax on income attributable to that PE notwithstanding that assessee at an entity level had suffered a loss-DTAA-India-UAE. [Art. 5, 7(1), 7(2)]**

The Full Bench was constituted to decide one of the questions arising in the petitions is whether any taxable income can be attributed to the Permanent Establishment (PE) in India if the overseas entity has incurred a loss in the relevant assessment year. Assessee contended that in case an enterprise at an entity level had suffered a loss at an entity level in relevant assessment year, no profit or income attribution would be warranted insofar as PE in India would be concerned. Court held that Article 7(1) constructs clear dichotomy between profits that may be earned by an enterprise on a global scale and those which are attributable to a PE situate in contracting state. It becomes further evident from Article 7(2) which stipulates that where an enterprise carries on business through a PE in other Contracting State, profits would be liable to be attributed to that PE as if it were a distinct and separate enterprise engaged in similar activities and independent of enterprise of which it may be a part. Article 7(1) itself excludes profits of an enterprise from being subjected to tax till such time as such an

entity carries on no business in other Contracting State through a PE. The fact that a PE was conceived to be an independent taxable entity could not be questioned. Article 7 cannot be viewed as restricting right of source State to allocate or attribute income to PE based on global income or loss that may have been earned or incurred by a cross border entity. Thus, where an assessee had a PE in India, it would be liable to pay tax on income attributable to that PE notwithstanding that assessee at an entity level had suffered a loss. The matters are placed before the appropriate Roster Bench for disposal of petitions. (AY. 2009-10 to 2017-18)

Hyatt International Southwest Asia Ltd. v. ADCIT (2024) 340 CTR 633 / 242 DTR 177 / 166 Taxmann.com 466 / (2025) 472 ITR 53 (FB) (Delhi)(HC)

Editorial : Refer, Hyatt International-Southwest Asia Ltd v. ADIT(2024) 297 Taxman 497 /464 ITR 508/ 337 CTR 39 (Delhi)(HC)

S. 9(1)(i): Income deemed to accrue or arise in India-Business connection-Strategic Oversight services-Not royalty-Business income-Since hotel premises were at disposal of assessee in respect of its business activities, Tribunal had rightly held that assessee had a PE in India in form of fixed place through which it carried on its business-DTAA-India-UAE. [S. 9(1)(vi), Art. 5(2)(a), 12] 64

Assessee, a tax resident of UAE, entered into two Strategic Oversight Services Agreements (SOSA) with an Indian company in respect of hotel located at Delhi. In terms of SOSA, assessee agreed to provide strategic planning services and know-how to ensure that hotel was developed and operated as an efficient and high quality international full-service hotel and received fee (strategic fee as well as incentive fee) as set out in SOSA. Assessing Officer and Tribunal held that payment received from owner under SOSA was royalty under DTAA as same related to provisions of know-how, skill, experience, commercial information and other intangibles. The Court held that the fee was not a consideration for use of or right to use any process or for information of commercial or scientific experience but was in consideration of providing services as set out in SOSA. Therefore, fee revived by assessee was not royalty under article 12 of DTAA but was in nature of business income. Court also held that in terms of SOSA, assessee agreed to provide strategic planning services and know-how to ensure Hotel was developed and operated as an efficient and high quality international full-service hotel. Order of Tribunal holding that the assessee had a Permanent Establishment (PE) in terms of article 5(2) of DTAA was affirmed. Court observed that the assessee exercised control in respect of all activities at hotel, inter alia, by framing policies to be followed by hotel in respect of each and every activity, and by further exercising apposite control to ensure that said policies were duly implemented. Admittedly, assessee also performed an oversight function in respect of hotel which was also carried out, at least partially if not entirely, at hotel premises. Since hotel premises were at disposal of assessee in respect of its business activities, Tribunal had rightly held that assessee had a PE in India in form of fixed place through which it carried on its business. (AY. 2009-10 to 2017-18)

Hyatt International-Southwest Asia Ltd v. ADIT (2024) 297 Taxman 497 /464 ITR 508/ 337 CTR 39 (Delhi)(HC)

Editorial : Refer, Hyatt International Southwest Asia Ltd. v. ADCIT (2024) 340 CTR 633 242 DTR 177 / 166 Taxmann.com 466 (FB) (Delhi)(HC)

65 **S. 9(1)(i): Income deemed to accrue or arise in India-Business connection-Business profits-Disallowed engineering fees on the ground that time log sheets were not filed, debit notes furnished provided sufficient information as to nature of duties and number of hours spent-Order of Tribunal deleting the disallowance is affirmed-Article 7 of OECD Model Convention. [S. 260A]**

Dismissing the appeal of the Revenue the Court held that, the involvement of the assessee in the project which was under execution was not in doubt. The DMRC had availed the engineering services rendered by the employees of the head office. The assessee only remitted the engineering fee to the head office. There is no dispute with regard to the fact that the debit note provided sufficient information not only concerning the names of the employees but also as to the nature of duties and number of hours that they spent on the job assigned to them. As the Tribunal was being the final fact-finding authority, hence no interference was called for, especially when revenue had not proposed any question which was indicative of the fact that any of the findings returned by the Tribunal was perverse. Therefore Disallowance was correctly deleted. (AY. 2005-06)

CIT (IT) v. Cobra Instalaciones Y Servicios S. A. (2024) 296 Taxman 287 (Delhi)(HC)

66 **S. 9(1)(i): Income deemed to accrue or arise in India-Business connection-Capital gains-Shares-Not liable to be assessed as capital gains-Explanations 6 and 7 to section 9(1)(i) has to be treated retrospectively as it have to be read along with Explanation 5 which operates from 1-4-1962-OECD Model Convention, Art 13. [S. 260A]**

The assessee, a Singapore based company, had invested in equity and preference shares of 'A', a company incorporated in and resident of Singapore. On 27-3-2015, the assessee sold its entire shareholding in 'A' to 'J' (an Indian company). The Assessing Officer computed the long-term capital gains arising from the transfer of shares of 'A' and proposed addition. The assessee submitted that Explanation 7 of section 9(1)(i) ought to have been given retrospective effect. The DRP up held the addition. Tribunal deleted the impugned addition holding that Explanations 4 and 5 inserted via the Finance Act, 2012 would operate retrospectively with effect from 1-4-1962. On appeal High Court up held the order of Tribunal. (AY. 2015-16)

CIT (IT) v. Augustus Capital Pte. Ltd (2024) 296 Taxman 398 / 463 ITR 199 (Delhi)(HC)

67 **S. 9(1)(i): Income deemed to accrue or arise in India-Business connection-Business profits-Composite contract-Service rendered and payment received outside India-Income earned on account of offshore supplies was not taxable-DTAA-India-South Korea. [S. 234B,260A, Art. 7]**

Dismissing the appeal of the Revenue the Court held that, though assessee had entered into a contract with MRVC for the supply of equipment and services, offshore as well as onshore, the terms of the contract distinctly set out the quantum of offshore supplies to be made by the assessee to MRVC and also the quantum of payment to be received by the assessee from MRVC outside India. The composite contract specifically records the quantum of goods to be supplied outside India, the property in the plant and machinery got transferred to MRVC once they were loaded on the mode of transport from the country of origin to India and even the payment is made outside India. Therefore the income arising from offshore supplies is not taxable in India. (AY. 2012-13)

CIT (IT) v. Iljin Electric Co. Ltd (2024) 296 Taxman 516 (Bom)(HC)

S. 9(1)(i) : Income deemed to accrue or arise in India-Business connection-Income from offshore supply of plants, equipments, spares, etc. -Assessee has furnished evidence to show that the global profit rate in the paper division is 3 per cent the estimation of profit at 5% by the CIT(A) cannot be accepted-Issue is restored to the AO for de novo adjudication-DTAA-India-Germany. [Art. 5] 68

Held that when the assessee has furnished evidence to show that the global profit rate in the paper division is 3 per cent the estimation of profit at 5% by the CIT(A) cannot be accepted. Issue is restored to the AO for de novo adjudication. (AY. 2015-16)

J. M. Voith Se & Co. Kg v. DCIT (IT) (2024) 230 TTJ 837 / 241 DTR 137 / 38 NYPTTJ 521 / 161 taxmann.com 734 /(2025) 121 ITR 402 (Delhi)(Trib)

S. 9(1)(i): Income deemed to accrue or arise in India-Business connection-Functions as selling and purchasing agent-Because the nature of business of trading is a continuous flow of the business process, that cannot be a foundation to conclude a principal-agent relationship for the purpose of art. 5 of the DTAA-There is no PE of assessee in the form of ITPL-DTAA-India-Japan-[S. 90, Art. 5(6)] 69

Held that as per art. 1 of memorandum of agency agreement, the appointment of the Indian subsidiary as agent was for the purpose of performing the functions as selling and purchasing agent for the export from Japan and the import into Japan of all kinds of goods. Article 1 itself mentions that the assessee-company as a principal reserves the right to quote price, place orders of the goods and otherwise deal directly with buyers and/or sellers located in the territory or visiting Japan from the territory, if all the actions of the assessee as principal, circumstances make it necessary advisable to do so. Because the nature of business of trading is a continuous flow of the business process, that cannot be a foundation to conclude a principal-agent relationship for the purpose of art. 5 of the DTAA. There was no PE of assessee in the form of ITPL. (AY. 2017-18)

ITOCHU Corporation v. ACIT (IT) (2024) 231 TTJ 744 / 242 DTR 57 / 38 NYPTTJ 995 (Delhi)(Trib)

S. 9(1)(i): Income deemed to accrue or arise in India-Business connection-None of the employees came to India for the purpose of either development or sale of or any activity related to development and sale of RPA software platform-No permanent establishment-No income attributable on sale of software licence-Additional ground-Rejected-DTAA-India-USA. [Art. 5, 12] 70

Tribunal held that there was nothing to demonstrate that the assessee has carried out any activity, either wholly or partly in relation to sale of software licence through the alleged PE in India so as to satisfy the conditions of art. 5(1) r/w art. 5(2) of the tax treaty. The income relating to the sale of software licence was not taxable no part of such income can be attributed to the PE. Additional ground being mixed question of fact and law is not a question of law. (AY. 2018-19, 2019-20)

Automation Anywhere Inc. v. Dy. CIT (IT) (2023) 153 taxmann.com 629 / (2024) 227 TTJ 287 / 234 DTR 295 (Delhi)(Trib)

71 **S. 9(1)(i): Income deemed to accrue or arise in India-Business connection-Non-Resident of Japan-Incurred loss-Only profits earned by Permanent Establishment in India is liable to tax-Addition is deleted-DTAA-India-Japan. [Art. 7]**

Held that only if profits attributable to the assessee's permanent establishment in India can be taxed. The assesseee incurred loss hence the Assessing Officer is directed to delete the addition. (AY. 2018-19, 2019-20)

Hitachi Ltd. v. ACIT (IT) (2024)116 ITR 393 / [2025] 171 taxmann.com 226 (Delhi)(Trib)

72 **S. 9(1)(i): Income deemed to accrue or arise in India-Business connection-Non-Resident-Dependent agent permanent establishment-Offshore supply of equipment-No fixed place-Addition under section. 44AB is deleted-Interest is consequential in nature-DTAA-India-France. [S. 444BBB 234B, Art. 5]**

Following the order of Tribunal for earlier year the Tribunal held that section 44BBB per se could not be made applicable in the case, that the contract is not artificially split for gaining any tax advantage as alleged by the Revenue, that there is no business connection of the assessee in India, that there did not exist a fixed place permanent establishment or construction permanent establishment of the assessee in India, and that, therefore, the addition made by the Assessing Officer was deleted. Levy of interest under S. 234B was consequential in nature. (AY. 2020-21)

GE Hydro France v. Dy. CIT (IT) (2024)116 ITR 42 (SN) (Delhi)(Trib)

73 **S. 9(1)(i): Income deemed to accrue or arise in India-Business connection-Limited Liability Company (LLC)-Resident of USA State by virtue of US Income-tax Law-Qualified as a person under Article 4 of Indo-US Tax Treaty-Eligible for treaty benefit-Liable to tax at 15 % and not 25%-DTAA-India-USA. [S. 90, Art. 4, 12]**

Assessee is a Limited Liability Company (LLC) incorporated in USA. Assessee claimed to be a resident of USA and offered to tax income by way of receipts on account of fees at rate of 15 per cent, applying rate given in India-USA DTAA. Assessing Officer held that LLCs were fiscally transparent entities according to US tax law, i. e., their income is not subject to tax in their own hands in USA and such corporations, therefore, did not qualify as residents of USA in terms of Article 4 of India-USA DTAA. He, accordingly, proceeded to bring to tax returned income of assessee at rate of 25 per cent. DRP affirmed the order of the AO. On appeal the Tribunal held that under US federal income tax law, an LLC with a single owner was disregarded as separate from its owner unless LLC elected to be treated as a corporation for US federal income tax purposes-Ability of LLC to elect its tax classification under US federal income tax law also supported legal situation or aspect of LLC being liable to tax. Further, where a LLC was disregarded as separate from its tax owner for US federal income tax purposes, tax owner of LLC paid tax on tax owner's share of taxable income attributed from LLC. Assessee being a resident under Article 4 of Indo-US Tax Treaty by virtue of incorporation and its recognition as a separate existence from its members qualified as a person. Accordingly the assessee was liable to tax in resident State by virtue of US Income-tax Law hence the tax authorities had fallen in error in not extending treaty benefit to assessee. (AY. 2014-15, 2015-16)

General Motors Company USA. v. ACIT IT, (2024) 209 ITD 60 (Delhi) (Trib.)

S. 9(1)(i): Income deemed to accrue or arise in India-Business connection-Non-Resident-Royalty-Licence to incorporate software belonging to non-Resident in Indian company's Vehicles-Receipts from supply of software is not royalty-Receipts business income not taxable in India in absence of a Permanent Establishment in India-Delay in filing of return-Extended notification-Matter remanded for verification-Interest-Income received after deduction of tax at source-Levy of interest is not valid-DTAA-India-China. [S. 9(1)(vi), 139, 209(1)(d), 234A, 234B, Art. 12(3)] 74

Held that under the licence agreement no rights were provided to make copies of software products or to modify, merge or combine with other software ; no right to change the object code from source code and make any derivative products from that had been provided and the technical documentation for the software remained the property of the assessee, the assessee was responsible for any claims of patent infringement and thus all intellectual property rights in the licensed products belonged to the assessee and its licensors only. The Indian company was required to get the terms of the legally binding end user licence agreement agreed by its customer before allowing use of the licensed products. The Indian company merely purchased the licensed software which was embedded in the head unit and fitted into cars for end use by the buyer of the car. The end user licence agreement was signed with the end user for use of the licensed software. The end user had limited right to use the application. The receipts from supply of software were not royalty income. The expression "imparting of information concerning industrial, commercial or scientific experience" alludes to the concept of "know-how" which is defined to mean "undivulged technical knowledge, information, experience or technique that is necessary for the industrial reproduction of a product or process". The licence agreement specifically provided for supply of software licence only, and the assessee had only supplied a standard, off-the-shelf software to the Indian company and had not given any "know-how" to the Indian company from which the Indian company could reproduce it for its perpetual use as the Indian company had to purchase licences equal to number of cars manufactured by it. The payments received by the assessee was not for the use of the copyright or imparting information concerning industrial, commercial or scientific experience and thus would not fall within the scope of article 12(3) of the DTAA to be taxed as royalty income. The receipts were business income in the hands of the assessee which was not taxable in India in the absence of a permanent establishment of the assessee in India. Held that interest under section 234A of the Income-tax Act, 1961 is levied only in cases where the assessee does not furnish its return of income or furnishes it after the due date prescribed under section 139 of the Act. The facts on record revealed that the assessee filed its return of income within the prescribed (extended) due date applicable to the assessment year. The Assessing Officer was to verify the date of filing of the return vis-a-vis the due date of filing of return for the assessment year 2020-21 in the light of the CBDT Notification No. 93/2020/F. No. 370142/35/2020-TPL dated December 31, 2020 by which the due date for furnishing of returns for the assessment year 2020-21 was extended to February 15, 2021 and decide it afresh in accordance with law. Tribunal also held that the proviso inserted in section 209(1)(d) of the Act by the Finance Act, 2012 with effect from April 1, 2012 would apply only where the person responsible for deducting tax has paid or credited such income without deduction of tax. Since the income had been received by

the assessee after deduction of tax at source the levy of interest under section 234B of the Act was not called for. (AY. 2020-21)
Saic Motor Overseas Intelligent Mobility Technology Co. Ltd. v. Asst. CIT (IT) (2024)110 ITR 49 (SN)/229 TTJ 801/ 239 DTR 42 (Delhi)(Trib)

75 **S. 9(1)(i): Income deemed to accrue or arise in India-Business connection-Operational staff and the Vessel and the captain of the vessel who originally belonged to the non-resident company and who had been sent to work under the complete control and supervision of the Assessee did not constitute a business connection for the non-resident in India-Article 5 of the OECD Model Convention.**
The Assessee contended that the overseas company did not carry out any dredging operations in India but only gave dredgers to the Assessee Company in India on a time charter basis, for which it charged a fixed fee/remuneration irrespective of the actual usage of such vessel. The Revenue argued that the foreign company had a business connection in India as the dredgers were continuously operating in Indian territorial waters. The Hon'ble Tribunal held that the foreign company did not have a business connection or permanent establishment in India. That the foreign company only provided dredgers on a lease basis without engaging in any active business operations in India. Further that the operational staff and the captain worked under the supervision and control of the Assessee, and the payments were for the use of equipment, not for any business activity conducted by the foreign company in India. (AY 2003 to 2010-11)
Jaisu Shipping Co. v. ADDI (2024) 111 ITR 601 (Rajkot)(Trib.)

76 **S. 9(1)(i): Income deemed to accrue or arise in India-Business connection-Changed mode of business operations-Computerized reservation system services on behalf of Air lines and Hotels to travel agents in India-No agency permanent establishment-Profits is not liable to tax in India-DTAA-India-USA [Art. 5, 7]**
The Assessee a US-based company, entered into Participating Carrier Distribution and services agreements with various airlines in India to facilitate ticket booking and related services through its computer reservation system (CRS). The company also had subscriber agreements with global travel agencies, allowing them access to the CRS. The Assessing Officer (AO) and the Dispute Resolution Panel (DRP) held that the Assessee had a fixed place PE and agency PE in India based on earlier assessment years' findings, despite changes in the business model post-2005. The Assessee contended that after 2005, there was a significant change in its business model. The company no longer provided computers, printers, or communication lines to travel agents in India. Instead, global travel agencies independently sourced these requirements. The Assessee argued that it did not have any office or employees in India and was not responsible for providing any equipment to Indian travel agents, thus negating the existence of a fixed place PE or agency PE in India. The Revenue contended that the Assessee had a fixed place PE and agency PE in India based on the company's operations and income generated from India. The AO and DRP relied on earlier assessment years' findings, arguing that the CRS gateway used by travel agents constituted a fixed place of business in India. They also maintained that the business model changes post-2005 did not materially alter the company's operations in India.

The Hon'ble Tribunal ruled in favor of the Assessee holding that the company did not have a fixed place PE or agency PE in India post-2005 due to changes in its business model. The Hon'ble Tribunal noted that the Assessee no longer provided equipment or communication links to Indian travel agents and had no office or employees in India. That the burden of proving the existence of a PE lies with the Revenue, which failed to establish this in light of the changed business model. (AY. 2012-13 to 2016-17)
Sabre GLBL Inc. v. ACIT (2024) 111 ITR 446 /230 TTJ 179 /159 taxmann.com 678 (Delhi) (Trib.)

S. 9(1)(i): Income deemed to accrue or arise in India-Business connection-Interest paid by Indian branch/PE of assessee, a French bank, to its head office (a foreign company)-Not taxable in India under India France DTAA since branch had borrowed from overseas head office and debt claim of head office was connected to PE branch in India-DTAA-India-France. [Art. 7, 12] 77
Held that interest paid by Indian branch/PE of assessee, a French bank, to its head office (a foreign company) would not be taxable in India under India France DTAA since branch had borrowed from overseas head office and debt claim of head office was connected to PE branch in India. (AY. 2021-22)
BNP Paribas v. ACIT (2024) 207 ITD 532 (Mum) (Trib.)

S. 9(1)(i): Income deemed to accrue or arise in India-Business connection-Business profits-Offshore supplies-Fees for technical services-Supply of goods and equipments was completed outside India-Transfer of title over goods had passed from non-resident assessee to Indian PSU's outside India-Receipts from such supply could not be made taxable in India-DTAA-India-China. [S. 9(1)(vii), Art. 7] 78
Assessee, a tax resident of China, received certain amount of consideration on account of offshore supply made to Indian PSUs. Assessing Officer, allocated 60 per cent of total receipts towards supply of equipment and 40 per cent towards fee for technical service (FTS) and made additions. DRP up held the addition. On appeal following the order of Tribunal in assessee's own case for earlier assessment years in *Jiangdong Fittings Equipments Co. v. ACIT (International Taxation) [2023] 157 taxmann.com 109 (Delhi (Trib.)* on similar issue had held that supply of goods and equipments was completed outside India and transfer of title over goods had passed from non-resident assessee to Indian PSUs outside India in terms with contract, receipts from such supply could not be made taxable in India. Tribunal directed the Assessing Officer to delete the addition. Following aforesaid order, Assessing Officer was to be directed to delete impugned additions. (AY. 2020-21)
Jiangdong Fittings Equipments Co. Ltd. v. ACIT (2024) 206 ITD 344 (Delhi) (Trib.)

S. 9(1)(i)) : Income deemed to accrue or arise in India-Business connection-Permanent Establishment-Interest on income tax refund-Not effectively connected with PE either on basis of asset-test or activity-test-It has to be taxed under article 12 of India-France DTAA at 10 percent and not as business income-DTAA-India-France. [Art. 7, 12, 15] 79
The assessee had received income tax refund. In the return of income the assessee offered the interest at the rate of 10 percent as per Article 12 of DTAA between India

and France. The Assessing Officer assessed the interest as business income in terms of Article 7 read with Paragraph 5 of Article 12 of the DTAA. DRP affirmed the order of the Assessing Officer. On appeal the Tribunal held that interest on income-tax refund is not effectively connected with permanent establishment either on basis of asset-test or activity-test, it could not be taxed under article 7 but was to be taxed under article 12 of India-France DTAA. (AY. 2018-19)
Corning SAS India v. ACIT (IT) (2024) 205 ITD 590 (Delhi) (Trib.)

80 **S. 9(1)(i): Income deemed to accrue or arise in India-Business connection-Permanent establishment-Agency PE-Indian subsidiary-Advertisement sales agent-Not dependent PE-Not taxable in India-DTAA-India-Mauritius. [Art. 5(4)]**
Assessee, a Mauritius based company, was engaged in telecasting sports channel called 'Ten Sports'. It appointed its Indian subsidiary (Taj India) as its advertising sales agent to sell commercial advertisement time to prospective advertisers in India. It also appointed Taj India as its distributor to distribute subscription supported television programming service solely for exhibition to subscribers in India. Later, by addendum in distribution agreement assessee gave Taj India authority to conclude contracts in its name. Assessing Officer held that assessee had a dependent agent PE in India within meaning of article 5(4)(i) of DTAA on ground that Taj India had authority to conclude contracts in name of assessee hence the income is taxable in India. On appeal the CIT(A) held that the assessee did not have any PE with respect to its distribution functions. On cross appeal the Tribunal held that since Assessing Officer failed to establish that Taj India habitually exercised authority to conclude contracts on behalf of assessee, in such case Taj India could not be said to be dependent agent PE of assessee under article 5(4) of DTAA and distribution income of assessee was not be taxable in India. (AY. 2013-14)
Taj TV Ltd. v. DCIT IT (2024) 204 ITD 50 (Mum) (Trib.)

81 **S. 9(1)(i): Income deemed to accrue or arise in India-Business connection-Permanent Establishment-Supply and delivery of equipment and supervision, installation, erection and commissioning activity-Single composite contract-Assessee had PE in India-Income attributable to Indian PE from said contracts is taxable in India-Matter remanded to the file of the AO for computation-DTAA-India-Germany. [Art. 5, 7]**
Assessee had entered into various contracts with Indian clients for supply and delivery of equipment and supervision, installation, erection and commissioning activity. Assessee did was not involved in any installation activity. Installation, erection and commissioning of projects was handled by wholly owned subsidiary of Germany company-Assessing Officer was of view that turnkey contract was a single composite contract between assessee and clients in India, thus he made an addition towards income attributable to Indian PE from said contracts and taxed same in hands of assessee-Whether in view of decision of Tribunal in assessee's own case for subsequent assessment years, contracts entered into by assessee with Indian clients was single composite contract and income arising therefrom was to be assessed in hands of the assessee, because project office of assessee constituted a PE in India. Further since assessee had failed to provide necessary information to justify that there was an error in computation of profit attribution to PE in India and there was duplication of income

in respect of service contract revenue, matter was remanded to Assessing Officer for limited purpose of computation of income (AY. 2009-10, 2011-12)
Durr Systems GmbH v. DCIT IT (2024) 204 ITD 258 (Chennai) (Trib.)

S. 9(1)(i): Income deemed to accrue or arise in India-Business connection-Permanent Establishment-Off shore supply of goods and equipments-Out side India-No Permanent Establishment-Not taxable in India-DTAA-India-Thailand. [Art. 5] 82

The assessee, a tax resident of Thailand, which is engaged in the business of manufacturing of train control and signalling systems for mass transit system. In terms with the contract, the assessee made offshore supply of goods and equipments to DMRC from outside India and received certain amount of consideration for such supply. The Assessing Officer held that the assessee had a service PE in India, through which, it executed the contract. Accordingly, out of the receipts from offshore supplies, the Assessing Officer attributed 10 per cent of the total receipts as profits of the PE and accordingly, brought the same to tax same. The DRP upheld the view taken by the Assessing Officer. On appeal the Tribunal held that, that the assessee did not have any place of business in India and all business activities with respect to offshore supplies were carried outside India. Equipment supply had been manufactured at overseas manufacturing facility of assessee and sale of equipment had occurred outside India and payment had also been received by assessee outside India. Therefore, addition made by Assessing Officer was deleted. (AY. 2020-21)
Alstom (Thailand) Ltd v. ACIT (IT)(2024) 204 ITD 455/110 ITR 251 (Delhi)(Trib)

S. 9(1)(ii) : Income deemed to accrue or arise in India-Salaries-Shipping, Inland waterways Transport and Air Transport-Salary-Salary income received by assessee-NRI from his foreign employer for working in international waters is exempt income-DTAA-India-Singapore. [S. 2(25A), 5(2)(b) 6, Art. 8] 83

Assessee is an Engineer (Under Water Inspector) working at offshore fields. During year under consideration, it he had received salary income from his Singapore based employer for work done in oil fields in Bay of Bengal in international water and had claimed same as exempt income. Assessing Officer held that oil fields in Bay of Bengal was part of Indian Territory and therefore, work performed by assessee could not be termed as work outside Indian Territory and also held that co-ordinates of oil fields in Bay of Bengal were situated within Exclusive Economic Zone of India and same was within part of "India" as defined in section 2(25A). Accordingly, he had made an addition of same under section 5(2)(b) read with section 9(1)(ii). CIT(A) affirmed the order of the AO. On appeal the Tribunal held that sub-section 9 of section 7 of Territorial Waters, Continental Shelf, Exclusive Economic Zone and Other Maritime Zones Act, 1976 gave freedom of navigation to foreign ships and therefore employees working on such ships who were not carrying out activities as specified by said notification were not deemed to be working in India. On facts, salary income received by assessee from his foreign employer was exempt income because of his non-residential status as salary was earned for working in international waters. Addition is deleted. (AY. 2018-19)
Pralay Pradyotkanti Ghosh v. ITO (IT) (2024) 208 ITD 163 (Ahd) (Trib.)

84 **S. 9(1)(ii) : Income deemed to accrue or arise in India-Salaries-Income from employment-Others-Non-resident for services rendered outside India-Assessee neither had any rest period nor leave period which was preceded and succeeded by services rendered outside India-Salary received by assessee from outside India could not be taxed in India-DTAA-India-UAE-Ireland. [S. 5, 15]**

Assessee, a non-resident Indian, received salary for services rendered in UAE and Ireland. Assessing Officer made addition to income of assessee on account of salary received by him. On appeal the Tribunal held that since salary was paid for services rendered outside India and assessee neither had any rest period nor leave period which was preceded and succeeded by services rendered outside India, it could not be brought to tax in India. (AY. 2019-20)

Sanjay Kumar. v. ACIT (IT) (2024) 206 ITD 14 (Delhi) (Trib.)

85 **S. 9(1)(ii) : Income deemed to accrue or arise in India-Salaries-Held, the Assessee, being a non-resident, has rendered services outside India, the salary cannot be taxable in India-DTAA-India-Austria [S. 5,15, Art. 15]**

The Assessee, an employee of an Indian company, was deputed to work in a project awarded by IAEA, Vienna, Austria and stationed at Vienna and was a non-resident. The salary and the compensatory allowances were paid to the Assessee at Vienna from the company in India which were permissible to be utilized through a credit card which was valid only in Austria. The AO made an addition on account of salary and allowances as the Assessee did not furnish a TRC. The Tribunal reproduced the provisions of S. 5 and 9 and observed that the Assessee neither had any rest period nor leave period which is preceded and succeeded by the services rendered outside India. Since, the Assessee, being a non-resident, has rendered services outside India, the salary can was not be taxable in India. (AY. 2016-17 2017-18)

Devi Dayal v. Asst. CIT (IT) [2024] 109 ITR 87 (SN) / 205 ITD 299 /228 TTJ 727 (Delhi) (Trib)

86 **S. 9(1)(v) : Income deemed to accrue or arise in India-Interest-Other income - Guarantee to various banks to extend credit facilities to its Indian subsidiaries-Guarantee charges were not received by assessee in respect of any debt owed to it by its Indian subsidiary- Guarantee fee would not fall within expression 'interest' in article 12 of India UK DTAA-Accrue-Arise-Income - SLP of assessee is dismissed - DTAA-India-UK-Northern Ireland. [S. 2(28A), 5(2), 260A, Art. 7, 12(5), 23(3), Art. 136]**

Assessee, a tax resident of United Kingdom, is engaged in manufacture of specialty chemicals. During relevant year, assessee had extended guarantees to various overseas branches of foreign banks on a global basis in relation to credit facilities extended by those financial institutions to its Indian subsidiaries. In its return of income, it had characterized amount of guarantee fee as interest and, thus, taxable under article 12. Assessing Officer held that said sum would be liable to be taxed under Article 23(3) being in nature of other income. Tribunal held that guarantee charges were not received by assessee in respect of any debt owed to it by its Indian subsidiary and guarantee charges were levied for service of providing parent company guarantees and counter indemnification of liabilities of Indian subsidiaries. Therefore on facts, guarantee

charges could not be viewed as 'interest' under Article 12. Further since guarantee charges became leviable every quarter at a rate already agreed upon by parties and on outstanding balance, guarantee charges clearly answered to description of income accruing or arising in India. Tribunal affirmed the order of Tribunal. Appeal of the assesseee is dismissed by High Court. SLP of assessee is dismissed. (AY. 2011-12)
Johnson Matthey Public Ltd. Co. v. CIT (IT) (2024) 469 ITR 31/ 301 Taxman 392 (SC)
Editorial: Johnson Matthey Public Ltd. Company v. CIT (2024) 299 Taxman 334 /465 ITR 649 (Delhi)(HC)

S. 9(1)(v) : Income deemed to accrue or arise in India-Interest-Other income-Guarantee to various banks to extend credit facilities to its Indian subsidiaries-Guarantee charges were not received by assessee in respect of any debt owed to it by its Indian subsidiary-Guarantee fee would not fall within expression 'interest' in article 12 of India UK DTAA-Accrue-Arise-Income-DTAA-India-UK-Northern Ireland [S. 2(28A), 5(2), 260A, Art. 7, 12(5), 23(3)] 87
Assessee, a tax resident of United Kingdom, is engaged in manufacture of specialty chemicals. During relevant year, assessee had extended guarantees to various overseas branches of foreign banks on a global basis in relation to credit facilities extended by those financial institutions to its Indian subsidiaries. In its return of income, it had characterized amount of guarantee fee as interest and, thus, taxable under article 12. Assessing Officer held that said sum would be liable to be taxed under Article 23(3) being in nature of other income. Tribunal held that guarantee charges were not received by assessee in respect of any debt owed to it by its Indian subsidiary and guarantee charges were levied for service of providing parent company guarantees and counter indemnification of liabilities of Indian subsidiaries. Therefore on facts, guarantee charges could not be viewed as 'interest' under Article 12. Further since guarantee charges became leviable every quarter at a rate already agreed upon by parties and on outstanding balance, guarantee charges clearly answered to description of income accruing or arising in India. Tribunal affirmed the order of Tribunal. Appeal of the assesseee is dismissed. (AY. 2011-12)
Johnson Matthey Public Ltd. Company v. CIT(IT) (2024) 299 Taxman 334 /465 ITR 649 (Delhi)(HC)
Editorial : SLP of assessee is dismissed, Johnson Matthey Public Ltd. Co. v. CIT (IT) (2024) 469 ITR 31/301 Taxman 392 (SC)

S. 9(1)(v) : Income deemed to accrue or arise in India-Interest-Banking business-Interest earned by it in India on securities, being beneficially owned by it-Exempt from tax-DTAA-India-Mauritius. [S. 90, 260A, Art. 11(3)(c)] 88
Assessee-company, a tax resident of Mauritius, earned certain amount as interest income from securities. Assessee claimed said income would be exempt under clause (c) of article 11(3) of India-Mauritius DTAA. Assessing Officer disallowed said claim of assessee. Revenue contended that clause (c) of article 11 of DTAA would not apply to assessee as it did not have a banking business license from RBI. DRP upheld the findings of the Tribunal. Tribunal held that interest income from securities would be exempt under clause (c) of article 11(3) of India-Mauritius DTAA. On appeal the

Court held that in draft assessment order Assessing Officer had granted exemption to interest on ECB by accepting that assessee was carrying on bona fide banking business in Mauritius. Since assessee was carrying a bona fide banking business in Mauritius, interest that assessee earned would be exempt in India. (AY. 2011-12)
CIT (IT) v. HSBC Bank (Mauritius) Ltd (2024) 298 Taxman 54 (Bom)(HC)

89 **S. 9(1)(v) : Income deemed to accrue or arise in India-Interest-Interest payment to China Development Bank (CDB)-Financial institution wholly owned by Government of China-Exemption-Not liable to deduct tax at source-DTAA-India-China. [S. 195, Art. 11(3)]**

Assessee-company made interest payment to China Development Bank (CDB) without deducting tax at source under section 195 claiming benefit of article 11. AO held that since as per Financial Statement of CDB only 36. 45% shares in said Bank was held by Government of China during relevant period, i. e., FY 2015-16, CDB could not claim benefit of DTAA and, hence, assessee was liable to deduct tax under section 195. CIT(A) held that the CDBB is a financial institution wholly owned by the Government of China and is eligible for the beneficial provisions of Article 11(3) of the India-China DTAA. On appeal the Tribunal held that in protocol to India-China DTAA, paragraph 3 was simultaneously inserted by deleting erstwhile paragraph 3 which defined term 'any financial institution wholly owned by Government of other Contracting State' and specific institutions listed in protocol for both India and China, were always covered as Government owned financial institution for purpose of article 11. Therefore CDB being a financial institution wholly owned by Government of China was eligible for benefit of provisions of Article 11(3) the assessee could not be treated as assessee in default with respect to non-deduction of tax on interest payments made to CDB. (AY. 2016-17)
ITO v. Tata Teleservices Ltd. (2024) 208 ITD 648 (Delhi) (Trib.)

90 **S. 9(1)(v) : Income deemed to accrue or arise in India-Interest-Right to receive interest income on compulsorily convertible debentures (CCDs)-Taxed @10 per cent as per Article 11 of India-Cyprus DTAA-DTAA-India-Cyprus. [Art. 11(2)]**

Assessee is a Cyprus based company and was a wholly owned subsidiary of a company based in Mauritius. It invested in compulsorily convertible debentures (CCDs) of an Indian company and earned interest. Assessee claimed benefit of tax rate of 10 per cent as per India-Cyprus DTAA. Assessing Officer denied benefit of said rate on ground that Mauritius based company was beneficial owner of interest income and not assessee and taxed same at domestic rate of 40 per cent. Held that investment in CCDs was done by assessee in its own name through proper banking channels and assessee had complete right to receive and enjoy interest income earned on CCDs without any obligation to pass on same to any other person. Assessee had also got complete control over interest income on investment in CCDs and was free to enjoy same as per its own wish. On facts, assessee being beneficial owner of interest income on CCDs from Indian entity, was entitled for taxability at a concessional rate as provided under article 11(2). (AY. 2017-18)
Little Fairy Ltd. v. ACIT. IT (2024) 207 ITD 284 (Delhi) (Trib.)

S. 9(1)(vi) : Income deemed to accrue or arise in India-Royalty-Deduction of tax at source-Payment to Non-Resident-Royalty User licence agreement for use of computer software by Non-Resident supplier to distributor and resold to resident end-user, or directly supplied to resident end-user-Not royalty for use of Copyright in computer software-Not liable to deduct tax at source-Review petition is dismissed on account of delay of 515 days and also on the merits. [S. 195, Copyright Act, 1957, S. 14(a), 14(b), 30] 91

Review of the decision in *Engineering Analysis Centre of Excellence Pvt. Ltd. v. CIT (2021) 432 ITR 471 (SC)* to the effect wherein the Court held that payment to Non-Resident for user licence agreement for use of computer software by Non-Resident supplier to distributor and resold to resident end-user, or directly supplied to resident end-user is not royalty for use of Copyright in computer software. Review petition is dismissed on account of delay of 515 days and also on the merits. (AY. 1999-2000 to 2002-03)

CIT v. GE India Technology Centre Pvt. Ltd. (2024)469 ITR 389 (SC)

Editorial: Engineering Analysis Centre of Excellence Pvt Ltd v. CIT (2021) 432 ITR 471 (SC) is reaffirmed.

S. 9(1)(vi) : Income deemed to accrue or arise in India-Royalty-Deduction of tax at source-Payments to Non-Residents-Telecommunications operators for providing inter-connectivity services and transfer of capacity in foreign countries-Not chargeable to tax as royalty-SLP of Revenue is dismissed. [S. 195, 201, Art. 136] 92

High Court, following *Engineering Analysis Centre of Excellence Pvt. Ltd. v. CIT (2021) 432 ITR 471 (SC)* allowed the assessee's appeals, holding that the Double Taxation Avoidance Agreement could be considered in proceedings under section 201, that amendment to the provisions of section 9(1)(vi) inserting the Explanations would not result in amendment of the Double Taxation Avoidance Agreements, that the Department had no jurisdiction to bring to tax income that arose from extra-territorial sources, that the payments made to the non-resident telecommunications operators for providing inter-connectivity services and transfer of capacity in foreign countries was not chargeable to tax as royalty under section 9(1)(vi) and that therefore, the assessee is not liable to deduct tax at source under section 195 thereon. Followed, *CIT v. GE India Technology Centre Pvt Ltd (2024) 469 ITR 389 (SC)*. SLP of Revenue is dismissed. (AY. 2008-09 to 2012-13, 2013-14 to 2015-16)

Dy. DIT v. Vodafone Idea Ltd. (2024) 469 ITR 391 (SC)

Editorial : Vodafone Idea Ltd v. Dy. CIT (2023) 457 ITR 189(Karn)(HC)

S. 9(1)(vi) : Income deemed to accrue or arise in India-Royalty-Fees for technical services-Revenue from software sales to Indian clients, said revenue could not be treated as royalty and subjected to Indian taxation-DTAA-India-USA [S. 9(1)(vii), 195, Art. 12, Art. 136] 93

Dismissing the appeal of the Revenue the Court held that, revenue from software sales to Indian clients, said revenue could not be treated as royalty and subjected to Indian taxation. SLP of Revenue is dismissed. (AY. 2010-11 to 2017-18)

CIT (IT) v. Microsoft Regional Sales Pte. Ltd. (2024) 301 Taxman 402 (SC)

Editorial: CIT (IT) v. Microsoft Regional Sales Pte. Ltd (2024) 159 taxmann.com 278 (Delhi)(HC)

94 **S. 9(1)(vi) : Income deemed to accrue or arise in India-Royalty-Computer software-Payments for licensing of software products-Resale of computer software-Not taxable as royalty-DTAA-India-USA-SLP of Revenue is dismissed. [Art. 12, Art. 136]**

Dismissing the appeal of the Revenue the High Court held that payments were made by Indian-company to non-resident company which was computer software manufacturer/ supplier for resale/use of computer software through distribution agreements, said payment did not amount to royalty for use of copyright in computer software, and same did not give rise to any income taxable in India. SLP of Revenue is dismissed. (AY. 2005-06, 2007-08)

CIT (IT) v. Gracemac Corporation Golf View Corporate (2024) 301 Taxman 172 / 468 ITR 1 (SC)

Editorial : CIT (IT) v. Gracemac Corporation Golf View Corporate (2022] 287 Taxman 197 / (2023) 456 ITR 124 (Delhi)(HC)

95 **S. 9(1)(vi) : Income deemed to accrue or arise in India-Royalty-Payment to Non-Resident telecommunication operators for provision of bandwidth and inter-connectivity usage-Not royalty-Not liable to deduct tax at source-Expansion of definition of royalty inserted later-Assessee cannot be expected to foresee future amendment at time of payment in earlier assessment years-Jurisdiction-No jurisdiction to tax income arising from extra-territorial source-Double Taxation Avoidance Agreement-Sovereign document between two countries-Applicable in Proceedings under Section 201 of the Act-DTAA-India-Belgium-SLP of Revenue is dismissed on account of delay of 222 days and also on merits. [S. 195, Art. 136]**

High Court held that a Double Taxation Avoidance Agreement being a sovereign document between two countries the assessee was entitled to take the benefit thereunder. Therefore, the Tribunal's view that the Double Taxation Avoidance Agreement cannot be considered in proceedings under section 201 was untenable. Held that amendment to the provisions of section 9(1)(vi) inserting the Explanations would not result in amendment of the Double Taxation Avoidance Agreements. The Supreme Court had held that Explanation 4 to section 9(1)(vi) was not clarificatory of the position as on June 1, 1976 and had expanded that position to include what was stated therein by the Finance Act, 2012. Explanations 5 and 6 to section 9(1)(vi) had been inserted with effect from June 1, 1976. Held that the fact that for the subsequent years in the assessee's own case, the Tribunal had held that tax was not deductible under section 195 when payment was made to non-resident telecommunications operators was not refuted. Therefore, the payments made to non-resident telecommunications operators for providing inter-connectivity services and transfer of capacity in foreign countries was not chargeable to tax as royalty under section 9(1)(vi). Held that the Department had no jurisdiction to bring to tax income that arose from extra-territorial sources. The non-resident telecommunications operators to whom the assessee had made payments had no presence in India. The assessee's contract was with B, a Belgium entity which had made certain arrangement with OMT for utilisation of bandwidth and B had permitted the assessee to utilise a portion of the bandwidth which it had acquired from OMT. The facilities were situated outside India and the agreement was with B, a foreign entity which did not have any permanent establishment in India. Therefore, the assessee was not liable to deduct tax at source under section 195 on the

payments made to the non-resident telecommunications operators. Held that Deputy Director (International Transaction) was not right in holding that for the assessment years 2013-14 to 2015-16 the withholding of tax liability could be levied at a higher rate at 20 per cent. Held that as a deductor, the assessee was not liable for deduction of tax at source for payments made for the assessment years 2008-09 to 2012-13 on the basis of a subsequent amendment to section 9(1)(vi) whereby Explanations 5 and 6 were introduced. SLP of Revenue is dismissed on account of delay of 222 days and also on merits. (AY. 2008-09 to 2012-13, 2013-14 to 2015-16)

DCIT v. Vodafone Idea Ltd. (2024)300 Taxman 364 (SC)

Editorial : Vodafone Idea Ltd. v. DCIT (2023) 152 taxmann.com 575/ 457 ITR 189 /334 CTR 39 (Karn)(HC)

S. 9(1)(vi) : Income deemed to accrue or arise in India-Royalty-Fees for technical services-High Court held that if rate of tax applicable under DTAA is lower than 20 per cent tax rate as prescribed under section 206AA, TDS has to be deducted at such lower rate even if non-resident deductee fails to furnish its PAN-DTAA-India-China-Delay of 255 days in filing SLP-Delay is not satisfactorily explained-SLP is dismissed. [S. 9(1)(vii), 90, 206AA, Art. 12] 96

Tribunal held that if rate of tax applicable under DTAA is lower than 20 per cent tax rate as prescribed under section 206AA, TDS has to be deducted at such lower rate even if non-resident deductee fails to furnish its PAN. Appeal against order of Tribunal filed after 273 days was dismissed by High Court both on delay and merits. Court held that since there was delay of 255 days in filing SLP against order of High Court and explanation offered for delay was not satisfactory, SLP is dismissed on ground of delay. (AY. 2011-12)

CIT v. Infosys Ltd. (2024) 300 Taxman 113 (SC)

Editorial : CIT (IT) v. Infosys Ltd (2024) 164 taxmann.com 280(Karn)(HC)

S. 9(1)(vi) : Income deemed to accrue or arise in India-Royalty-Fees for technical services-Revenue from software sales to Indian clients, said revenue could not be treated as royalty and subjected to Indian taxation-DTAA-India-USA [S. 9(1)(vii), 195, art. 12, Art. 136] 97

Dismissing the appeal of the Revenue the Court held that,revenue from software sales to Indian clients, said revenue could not be treated as royalty and subjected to Indian taxation. SLP of Revenue is dismissed. (AY. 2010-11 to 2017-18)

CIT (IT) v. Microsoft Regional Sales Pte. Ltd (2024) 298 Taxman 3 / 297 Taxman 535 (SC)

Editorial : CIT(IT) v. Microsoft Regional Sales Pte. Ltd (2024) 159 taxmann.com 278 (Delhi)(HC)

S. 9(1)(vi) : Income deemed to accrue or arise in India-Royalty-Fees for technical services-Sale of software-Subscription fees-Order of High Court is affirmed-SLP of Revenue is dismissed-DTAA-India-USA [S. 9(1)(vii), art. 12, Art. 136] 98

High Court held that where assessee, a US based company, earned revenue from sale of software to its Indian clients, since grant of right to install and use software did not include providing copyright of said software to clients, revenue earned from said sale would not be taxable in hands of assessee as royalty in India.. High Court also held

that where assessee, a US based company, provided cloud computing infrastructure to its Indian clients through subscription agreement and even though cloud based services were based on patents/copyright but subscribers did not get any right of reproduction, thus, subscription fee was merely a consideration for online access of cloud computing services and would not be taxable as royalty in India. In view of judgment of this Court in case of *Engineering Analysis Centre of Excellence (P.) Ltd. v. CIT [2021] 125 taxmann.com 42/281 Taxman 19/432 ITR 471 (SC)/[2022] 3 SCC 321 and CIT (International Taxation) v. MOL Corporation [SLP(C) Diary No. 5669 of 2024, dated 11-3-2024]*
CIT v. MOL Corporation (2024) 299 Taxman 506(SC)
Editorial: CIT (IT)) v. MOL Corporation (2024) 162 taxmann.com 197 (Delhi)(HC)

99 **S. 9(1)(vi) : Income deemed to accrue or arise in India-Royalty-Computer software-Sale of conditional access systems and middleware products to Indian customers-Not taxable as royalty-SLP dismissed-DTAA-India-Switzerland. [Art. 12(3)]**
Dismissing the appeal of the Revenue the Court held that the Tribunal was justified in holding that the income received from supply of conditional access systems and middleware products to Indian customers did not fall under "royalty" as defined under section 9(1)(vi) of the Income-tax Act, 1961, and article 12(3) of the Double Taxation Avoidance Agreement between India and Switzerland. SLP of Revenue is dismissed. (AY. 2017-18)
CIT (IT) v. Nagravision S. A. (2024) 461 ITR 146/ 297 Taxman 65 (SC)
Editorial : CIT (IT) v. Nagravision S. A. (2023) 157 taxmann.com 457/ (2024) 461 ITR 143 (Delhi)(HC).

100 **S. 9(1)(vi) : Income deemed to accrue or arise in India-Royalty-Sale of telecom equipment's. i. e. mobile handsets-Supply of articles or goods-Not taxable as royalty-Review petition against SLP is dismissed-DTAA-India-China [S. 9(1)(i), Art, 12]**
Dismissing the appeal of the Revenue, the Court in *CIT (IT) v. ZTE Corporation (2021) 130 taxmann.com 128 (Delhi) (HC)* 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. SLP was dismissed. Review petition against SLP is dismissed. (AY. 2013-14)
CIT (IT) v. ZTE Corporation (2024) 296 Taxman 571 (SC)
Editorial : Refer, CIT (IT) v. ZTE Corporation (2021) 282 Taxman 304 (SC)

101 **S 9(1)(vi) : Income deemed to accrue or arise in India-Royalty-Fees for technical services-High Court held that if rate of tax applicable under DTAA is lower than 20 per cent tax rate as prescribed under section 206AA, TDS has to be deducted at such lower rate even if non-resident deductee fails to furnish its PAN-DTAA-India. [S. 9(1)(vii), 90, 206AA, Art. 12]**
Tribunal held that if rate of tax applicable under DTAA is lower than 20 per cent tax rate as prescribed under section 206AA, TDS has to be deducted at such lower rate even if non-resident deductee fails to furnish its PAN. Appeal against order of Tribunal filed after 273 days was dismissed by High Court both on delay and merits. (AY. 2011-12)
CIT (IT) v. Infosys Ltd (2024) 164 taxmann.com 280 (Karn)(HC)

Editorial : SLP of revenue dismissed, delay of 255 days was not satisfactorily explained, CIT v. Infosys Ltd. (2024) 300 Taxman 113 (SC)

S. 9(1)(vi) : Income deemed to accrue or arise in India-Royalty-Amounts paid by resident Indian end-users/distributors to non-resident computer software manufacturers/suppliers-Consideration for resale/use of computer software through EULAs/distribution agreements-Not payment of royalty for use of copyright in computer software-Not liable to deduct tax at source-DTAA-India-USA. [S. 9(1)(vii)), 195(2), 260A Art. 12] 102

Assessee, a non-resident company, received consideration for supply of software to Reliance and claimed same to be business income not taxable in India in absence of any permanent establishment in India. Assessing Officer held that consideration received by assessee was towards a license to use software and, thus, taxable as royalty under section 9(1)(vi) hence liable to deduct tax at source. CIT(A) allowed the appeal of the assessee. On appeal Tribunal affirmed the order of the CIT(A). On appeal the Court held that the issue is covered by judgment of Supreme Court in case of *Engineering Analysis Centre of Excellence (P.) Ltd. v. CIT(2021) 281 Taxman 19/ 432 ITR 471 (SC)* wherein it was held that amounts paid by resident Indian end-users/distributors to non-resident computer software manufacturers/suppliers, as consideration for resale/use of computer software through EULAs/distribution agreements, was not payment of royalty for use of copyright in computer software and that same did not give rise to any income taxable India. Order of Tribunal is affirmed. No substantial question. of law. (AY. 2003-04, 2004-05, 2006-07 2010-11 2010-11)

CIT(IT-3) v. Lucent Technologies GRL LLC (2024) 300 Taxman 311 (Bom)(HC)

S. 9(1)(vi) : Income deemed to accrue or arise in India-Royalty-Fees for technical services-Non-resident-Computer software manufacturer/supplier for resale/use of computer software through distribution agreements-Payment did not amount to royalty for use of copyright in computer software-Not taxable in India-Not liable to deduct tax at source-No substantial question of law-DTAA-India-Finland. [S. 9(1)(vii), 195, Art. 12] 103

Dismissing the appeal of the Revenue the Court held that payments were made by assessee-company to non-resident-company which was computer software manufacturer/ supplier for resale/use of computer software through distribution agreements, said payment did not amount to royalty for use of copyright in computer software, and same did not give rise to any income taxable in India. No substantial question of law. Followed *CIT (LTU) 2024) 164 taxmann.com 10 /299 Taxman 488 (Bom)(HC)* (AY. 2008-09, 2009-10)

CIT (LTU) v. Reliance Industries Ltd (2024) 300 Taxman 398 (Bom)(HC)

104 **S. 9(1)(vi) : Income deemed to accrue or arise in India-Royalty-Provision of connectivity solutions-Services to customers of Indian companies outside India-Consideration received on basis of agreements from telecommunication operators for Bandwidth and inter-connectivity usage of their customers-Provisions of double taxation avoidance agreement override statutory provisions and amendments thereto-Receipts not assessable as royalty in India-No alienation of copyrighted articles, patents, trademarks, designs, models, secret formulae or processes, property or information-Mere advantage or benefit derived from service provided cannot be countenanced to fall within meaning of expressions use or right to use-Receipts under agreements for provision of bandwidth not royalty-Use or right to use-DTAA-India-Singapore. [S. 90(2),260A, Art. 3(2), 12(3)]**

Dismissing the appeal of the Revenue, Court held that consideration received on basis of agreements from telecommunication operators for Bandwidth and inter-connectivity usage of their customers. Provisions of double taxation avoidance agreement override statutory provisions and amendments thereto. Receipts not assessable as royalty in India. No alienation of copyrighted articles, patents, trademarks, designs, models, secret formulae or processes, property or information. Mere advantage or benefit derived from service provided cannot be countenanced to fall within meaning of expressions use or right to use. Receipts under agreements for provision of bandwidth not royalty. That even if Explanations 2 and 6 to section 9 applied, the position would remain unaltered since there was no transfer or conferment of a right in respect of a patent, invention or process. Customers and those availing of the services provided by the assessee were not accorded a right over the technology possessed or infrastructure by it. The underlying technology and infrastructure remained under the direct and exclusive control of the assessee and the parties availing of the assessee's services were not provided a corresponding general or effective control over any intellectual property or equipment. The agreements merely enabled them to avail of the services offered by the assessee. A person who was provided mobile communication services or access to the internet did not stand vested with a right over a patent, invention or process. The consideration that the service recipient paid also could not be recognised as being intended to acquire a right in respect of a patent, invention, process or equipment. The word "process" being liable to be construed ejusdem generis was lent added credence by clause (iii) employing the expression "or similar property" which followed. It was intended to extend to a host of intellectual properties. Neither the concept of process nor equipment royalty were attracted and the considerations for the transactions in question were not taxable under article 12 of the Double Taxation Avoidance Agreement. (AY. 2011-12, 2012-13, 2014-15 to 2019-20)

CIT (IT) v. Telstra Singapore Pte Ltd. (2024)467 ITR 302/ 165 taxmann. com 85 / 340 CTR 265/ 242 DTR 1 (Delhi)(HC)

105 **S. 9(1)(vi) : Income deemed to accrue or arise in India-Royalty-Domain name-Amount received for providing domain name registration services-Cannot be assessed as royalty-Appeal of assessee is allowed-DTAA-India-USA. [Art. 12(3)(a)]**

Assessee provides web hosting services, the registration and transfer of generic top-level domains, such as .com,. net, org. and info-Besides this, the assessee also provides the

same service for country code top-level domains, which includes a mark, distinguishes the goods and services of one person from those of others. Agreement in no uncertain terms, establishes that the assessee has given up exclusive ownership or use of data elements for all registered names submitted by it to the registry database or sponsored by it. Agreement clearly establishes that the assessee who acts as a registrar and, in that capacity, provides domain registration services to its customers does not have any proprietorship rights in the domain name. Therefore, the submission advanced on behalf of the assessee, i. e., that since it is not the domain name's owner, it cannot confer the right to use or transfer the right to use the domain name to another person/ entity, is accepted ance. Therefore, the fee received by the assessee for registration of domain names of third parties, i. e., its customers, cannot be treated as royalty. Appeal of assessee is allowed. (AY. 2013-14 to 2015-16)
Godaddy.Com LLC v. ACIT [2023] 157 taxmann.com 256 /(2024) 337 CTR 321 (Delhi)(HC)

S. 9(1)(vi) : Income deemed to accrue or arise in India-Royalty- Income-Tax-Transfer of Copyright and right to copyrighted article-Customer relationship management services by resident of Singapore-Fees received not royalty-Not taxable in India - DTAA-India-Singapore [Art. 12(4)(b)] 106

Dismissing the appeal of the Revenue the Court held that since the copyright in the application was never transferred nor vested in a subscriber, the fees were not assessable under section 9 of the Act. Court also held that article 12(4)(b) of the Double Taxation Avoidance Agreement between Singapore and India would have been applicable provided the Department had been able to establish that the assessee had provided technical knowledge, experience, skill, know-how or processes enabling the subscriber acquiring the services to apply the technology contained therein. The explanation of the assessee, which had not been refuted even before the High Court was that the customer was merely accorded access to the application and it was the subscriber which thereafter inputs the requisite data and took advantage of the analytical attributes of the software. This would clearly not fall within the ambit of article 12(4)(b) of the Agreement. (AY. 2011-12 to 2017-18)
CIT (IT) v. Salesforce. Com Singapore Pte. Ltd. (2024)465 ITR 257 (Delhi)(HC)

S. 9(1)(vi) : Income deemed to accrue or arise in India-Royalty-Transferee authorised to use licensed software-No transfer of Copyright-Amount received is not royalty-DTAA-India-USA. [S. 90(2) Art. 12] 107

Dismissing the appeals of the Revenue the Court held that the Tribunal was right in holding that payments for licensing of software products of the assessee in the territory of India by it were not taxable in India as royalty under section 9(1)(vi) read with article 12 of the Double Taxation Avoidance Agreement. (AY. 1997-98, 1999-2000)
CIT (IT) v. Microsoft Corporation (2022) 445 ITR 6 / 288 Taxman 32 (Delhi)(HC)
Editorial: SLP of Revenue dismissed, CIT (IT) v. Microsoft Corporation (Ms Corp) (2023)453 ITR 746 (SC)

108 **S. 9(1)(vi) : Income deemed to accrue or arise in India-Royalty-Fees for technical services-Consideration received by a company incorporated in Israel, for sale of software-Not royalty-No transfer of copyright in sale of off shelf software-Not taxable in India-DTAA-India-Israel. [S. 9(1)(vii) Art. 12]**

Dismissing the appeal of the Revenue the Court held that consideration received by assessee, a company incorporated and based in Israel, for sale of software to Indian company was not royalty since there was no transfer or use of copyright in sale of 'off shelf' software that could come within ambit of royalty and, hence, it was not taxable in India. (AY. 2011-12)

CIT(IT) v. Cognyte Technologies Israel Ltd (2024) 297 Taxman 120 (Delhi)(HC)

109 **S. 9(1)(vi) : Income deemed to accrue or arise in India-Royalty-Fees for included services-Reviewing risk factor in particular project-Cannot be deemed to accrue or arise in India-DTAA-India-USA. [S. 9(1)(vii), Art. 12]**

Dismissing the appeal of the Revenue the Court held that the services rendered by the assessee were project specific and terminated with submission of bid by ABB India after making necessary changes or corrections in the bid based on the evaluation report. If the agreement permitted the assessee to make available the results for guidance to other entities in the group, that could not be attributed as services "made available" which could be used in perpetuity. No income accrued or arose to the assessee in India. Appeal of Revenue is dismissed. (AY. 2009-10)

CIT (I). v ABB INC. [2023] 152 taxmann.com 101/(2024)461 ITR 297 (Karn)(HC)

110 **S. 9(1)(vi) : Income deemed to accrue or arise in India -Royalty - Computer software-Sale of conditional access systems and middleware products to Indian customers -Not taxable as royalty- DTAA -India– Switzerland. [Art. 12(3)]**

Dismissing the appeal of the Revenue the Court held that the Tribunal was justified in holding that the income received from supply of conditional access systems and middleware products to Indian customers did not fall under "royalty" as defined under section 9(1)(vi) of the Income-tax Act, 1961, and article 12(3) of the Double Taxation Avoidance Agreement between India and Switzerland. (AY. 2017-18)

CIT (IT) v. Nagravision S. A. (2023) 157 taxmann.com 457/ (2024) 461 ITR 143 (Delhi) (HC).

Editorial : SLP of Revenue is dismissed, CIT (IT) v. Nagravision S. A. (2024)461 ITR 146/ 297 Taxman 65 (SC)

111 **S. 9(1)(vi) : Income deemed to accrue or arise in India-Royalty-Fees for technical services-Business profits not taxable in India-DTAA-India-Malaysia. [S. 9(1)(vii), 90(2) Art. 5, 7, Copyright Act, 1957, S. 14(a), 14(b)]**

Held that since the assessee had no permanent establishment in India, income earned by it as business profits in India would not be taxable in India by virtue of the provisions of article 7 of the Double Taxation Avoidance Agreement between India and Malaysia according to which a tax resident of Malaysia would be taxable in India to the extent of the profits attributable to the permanent establishment in India only if it carried on business through a permanent establishment in India. The enterprises would be taxable

only to the extent article 5 of the Double Taxation Avoidance Agreement defined the permanent establishment as inter alia a place of management, a branch, an office, a factory, a warehouse and a workshop. (AY. 1999-2000)
CIT (IT) v. Colgate Palmolive Marketing Sdn Bhd(2023) 152 taxmann.com 124/ (2024)460 ITR 284 (Bom)(HC)

S. 9(1)(vi) : Income deemed to accrue or arise in India-Royalty-Payment for supply of software-The payments received by the assessee is for the supply of software do not fall within the scope of art. 12(3) of the India-China DTAA. In the absence of PE the income is not taxable in India. DTAA-India-China. [Art. 12(3)] 112
Assessee has granted a non transferable, non-exclusive, non-assignable license to incorporate the software into the vehicles manufactured/sold by MG to the end customers. No rights have been provided to make copies of software products or to modify, merge or combine with other software. No right to change the object code from source code and make any derivative products from that have been provided. Technical documentation for the software remained the property of the assessee. All intellectual property rights in the licensed products belong to the assessee and its licensors only. Assessee has not transferred the copyright/right to use the copyright of the software but merely the copyrighted software. The payments received by the assessee is for the supply of software do not fall within the scope of art. 12(3) of the India-China DTAA. In the absence of PE the income is not taxable in India. (AY. 2020-21)
SAIC Motor Overseas Intelligent Mobility Technology Co. Ltd. v. ACIT (IT) (2024) 229 TTJ 801 / 239 DTR 42 / 159 taxmann.com 779 (Delhi)(Trib)

S. 9(1)(vi) : Income deemed to accrue or arise in India-Royalty-Supply of telecommunication hardware with software-Receipt is not taxable as royalty-Not liable to pay interest u/s234B-DTAA-India-USA [S. 90,195, 234B, Art. 7, 12] 113
Held that the assessee supplied telecommunication hardware along with software and the software embedded in the hardware was provided only for the purpose of operating the telecommunication equipments and thus, the receipts. are not taxable as royalty income, either under the domestic law or India USA DTAA. Interest under section 234B cannot be charged as the assessee being non-resident company is not liable to pay advance tax since the payer in under obligation to withhold tax under section 195 of the Act. (AY. 2004-05, 2005-06)
DIT v. Ut Starcom Inc. (2023) 155 taxmann. com 117 /37 NYPTTJ 923 (2024) 228 TTJ 479 / 236 DTR 339 (Delhi) (Trib)

S. 9(1)(vi) : Income deemed to accrue or arise in India-Royalty-Selling advertising in, and distribution of, television channels in India through Indian company-No transfer of copyright, title or ownership interest to Indian company-Receipts taxable as business income and not royalty-DTAA-India-USA. [S. 9(1)(i), Art 12] 114
Following the order of the earlier year the Tribunal held that there was no transfer of copyright, title or ownership interest from the assessee to the Indian company, that broadcast reproduction right was distinct and separate from copyright, and that, therefore, the distribution revenue received by the assessee from W towards the grant of

distribution rights of its channels constituted business income, not royalty. The additions made by the Assessing Officer was deleted. (AY. 2020-21, 2021-22)
Turner Broadcasting System Asia Pacific Inc., USA v. Dy. CIT (2024) 115 ITR 21 (SN) (Delhi)(Trib)

115 **S. 9(1)(vi) : Income deemed to accrue or arise in India-Royalty Deduction at source-Non-resident--Sponsorship agreement-Payment for right to use and display event marks-Having non-exclusive right to use footage relating to events or matches which recipients owned-Not royalty-Allowed refund of excess tax-DTAA-India-Singapore. [S. 195, Art. 7(1), 12(3)]**

The assessee was appointed official sponsor of International Cricket Committee events, and entered a sponsorship agreement with GCC and WSN. The assessee sought authorisation for remittances to GCC without tax deduction at source, asserting that the payment to GCC was not taxable in India in terms of article 7(1) of the Double Taxation Avoidance Agreement between India and Singapore in the absence of a permanent establishment. The Assessing Officer rejected this and deemed the amounts to be in the nature of "royalty" and directed deduction of tax at source at 24 per cent. and education cess at 2 per cent. The Commissioner (Appeals) granted part relief to the assessee holding that 50 per cent. of the payment was for usage of trademark, trade name, and copyright in the nature of "royalty" and taxable under article 12. On appeal claiming refund of excess tax paid in respect of remittances made to GCC, The Tribunal held that that the assessee had made payment primarily for the right to use and display event marks, etc. The other right to use official status, advertising and promotional rights before and at each event, and right to tickets and corporate hospitality were ancillary rights which the assessee had been allowed to exploit. The assessee had the non-exclusive right to use footage relates to the events or matches which IDI and GCC owned. That the payments made by the assessee to GCC were not in the nature of royalty as defined under section 9(1)(vi) of the Income-tax Act, 1961 or article 12(3) of the DTAA. That the State could not charge tax more than what was due from its subjects. If any tax had been paid by the assessee to the Government exchequer in the form of tax deducted at source on the payment made in pursuance to the sponsorship agreement, the assessee may claim refund thereof, in accordance with law.
Indian Oil Corporation Ltd. v. Dy. DIT (IT) (2024)113 ITR 403 (Mum)(Trib)

116 **S. 9(1)(vi) : Income deemed to accrue or arise in India-Royalty- Sale of online advertisement space to GIPL, India and to direct advertisers-Payment received from GIPL is not in nature of royalty or FTS-Not liable to tax in India-DTAA-India-Ireland. [S. 9(1)(vii), Art. 12]**

Assessee, Google Ireland, an Ireland based company, which is engaged in business of sale of online advertisement space to GIPL and to direct advertisers. Assessing Officer held that assessee had given marketing and distribution rights of Ad words program to GIPL and income received from sale of online advertisement space was in nature of royalty. He, thus, issued reopening notice on ground that assessee had not offered receipts for tax and income had escaped assessment. CIT(A) deleted the addition. On appeal the Tribunal in assessee's own case for assessment year 2007-08 held that

payment made by GIPL to assessee is not in nature of royalty or FTS and, consequently, it could not be brought to tax in hands of assessee. Order of the CIT(A) is affirmed. (AY. 2008-09)
DCIT v. Google Ireland Ltd. (2024) 209 ITD 461 (Bang) (Trib.)

S. 9(1)(vi) : Income deemed to accrue or arise in India-Royalty-Sub-Licence of designated rights-Not royalty-Addition is deleted-Deduction of tax at source-Direction is given to Assessing Officer to verify and allow correct credit of taxes deducted at source. [S. 9(1)(i), Form 26AS.] 117
Held that sub-licence designated rights is not royalty. Tribunal also directed the AO to allow correct credit for the taxes deducted at source. (AY. 2014-15)
ESS v. Asst. CIT (IT) (2024)112 ITR 326 (Delhi)(Trib)

S. 9(1)(vi) : Income deemed to accrue or arise in India-Royalty-Payments made for hiring dredgers on a time charter basis qualify as royalty for use of equipment-liable to deduct tax at source. [S. 195] 118
Held that the payments made by the Assessee to the foreign companies for hiring dredgers on a time charter basis qualify as royalty under Section 9(1)(vi) of the Income-tax Act. That the Assessee had exclusive control and possession of the dredgers, and the payments were made for the use of equipment, thus qualifying to be taxed as Royalty. Liable to deduct tax at source. (AY 2003 to 2010-11)
Jaisu Shipping Co. v. ADIT (2024) 111 ITR 601/160 taxmann.com 128 (Rajkot)(Trib.)

S. 9(1)(vi) : Income deemed to accrue or arise in India-Royalty-Subscription fees received by the assessee from its customers for providing access to databases and journals were not royalty-DTAA-India-USA [Art. 12(3) 119
Held that the subscription fees received by the assessee from its customers for providing access to databases and journals were not royalty as customers did not acquire copyright, and therefore, such fees were not liable to be taxed in India. (AY. 2021-22)
American Chemical Society v. Dy. CIT (IT) (2024) 111 ITR 38 (SN) /161 taxmann.com 354 (Mum)(Trib.)

S. 9(1)(vi) : Income deemed to accrue or arise in India-Royalty-Licensed software-Software packages like office 365, etc. -Amount paid to any use or right to use any copy right-Merely because tax was deducted at source u/s. 195 would not make payment liable to be taxed as royalty. [S. 9(1)(vi), Expln 2(iva), 195] 120
The assessee, a Danish Company, had entered into a global agreement with Microsoft for procuring various shrink-wrapped software user licenses such as Microsoft Visual Studios, dynamic 365, remote Desktop, office 365, etc., for entities within the Saxo group. The assessee received payments against the above licenses from its associated enterprise, M/s. Saxo Group India P. Ltd. (SGIPL) on which tax was withheld under section 195 of the Act. The assessee claimed that receipts from, its associated enterprise, M/s. Saxo Group India P. Ltd., was exempt which the Revenue treated as taxable as Royalty u/s. 9(1)(vi) of the Act because such receipt was for allowing use of its information technology infrastructure which consists of various third-party software,

owned/leased/supported platforms including hardware systems. On appeal to the Tribunal, after going through the documents produced and agreements, it held that the amount cross charged by the assessee did not pertain to any use or right to use of any copyright as neither the assessee nor M/s. Saxo Group India P. Ltd., could sub-licence, transfer, reverse engineer, modify or reproduce the software/user licence. M/s. Saxo Group India P. Ltd., acknowledged that the Microsoft Software had been granted to the assessee by Microsoft Denmark ApS under an object code-only, non-exclusive, non-sublicensable, non-transferable, revocable licence to access and use the object code version of the proprietary software, solely for the assessee and its group/associate companies' internal business purposes. Therefore, it held that mere fact that tax has been deducted does not automatically make the receipt taxable as royalty. (AY. 2020-21)
Saxo Bank A/S v. Asst. CIT (IT) (2024) 112 ITR 8 / 161 taxmann.com 590 (Delhi)(Trib.)

121 **S. 9(1)(vi) : Income deemed to accrue or arise in India-Royalty- Offshore sales of books/journals or providing access to online journals/online library-Not royalty-Services of providing access to online database/journals did not fall under FIS as services did not satisfy clause make available as required for provisions of article 12 of DTAA-India-USA [S. 9(1)(vii), Art. 12]**

Assessee, a US based company, was engaged in business of providing access to online journals/online library. Assessee entered into agreements from outside of India with customers in India to provide access to online journals/online library available at its online database maintained outside of India and earned revenue. Assessee claimed that said receipts from Indian customers were not chargeable to tax as Royalty/FTS/FIS under provisions of Act, 1961 read with India-US DTAA-DRP affirmed the order of the AO. On appeal the Tribunal held that since assessee sold compiled, indexed or curated articles obtained from other authors as copyrighted article/product, for easy access to customers and limited rights to access online journals granted by assessee to Indian customers did not amount to granting of any right in copyright in any manner whatsoever, receipts from Indian customers did not constitute royalties under DTAA. Accordingly receipts from Indian customers for offshore sales of books/journals or providing access to online journals/online library did not qualify as royalties under Act as well as under Treaty. Tribunal also held that services of providing access to online database/journals did not fall under FIS as services did not satisfy clause 'make available' as required for provisions of article 12 of DTAA. (AY. 2020-21)
John Wiley and Sons Inc. v. DCIT, IT (2024) 208 ITD 655/114 ITR 52(SN) (Delhi) (Trib.)

122 **S. 9(1)(vi) : Income deemed to accrue or arise in India-Royalty-Business of providing digital transmission of data-Bandwidth charges received from Indian customers-Not taxable as royalty-DTAA-India-Singapore. [Art. 12(3)]**

Assessee, a non-resident corporate entity, which is engaged in business of providing digital transmission of data through International Private Leased Circuits or Multiprotocol Label Switching to facilitate high speed data connectivity, Bandwidth charges received from Indian Customers were not taxable as royalty income either under section 9(1)(vi) or under Article 12(3). (AY. 2021-22)
Telstra Singapore Pte. Ltd. v. DCIT (2024) 207 ITD 73 (Delhi) (Trib.)

S. 9(1)(vi) : Income deemed to accrue or arise in India-Royalty-Fees for technical services-Receipts from reservation fee, marketing fee and loyalty programme-Cannot be assessed as royalty income-DTAA-India-Singapore [S. 9(1)(vii), Art. 12] 123

Assessee, a Singapore based company, had entered into franchise agreement with Indian companies to sub-license brand names to third party hotels in India. Assessee offered amounts received towards franchise, license fee etc. as royalty income. However, assessee did not offer receipts from reservation services, marketing services and loyalty programme to tax in India pleading that they were neither in nature of royalty nor fees for technical services. Assessing Officer held that amount received for services rendered in connection with use or right to use any trade mark fell within scope of royalty and, thus, treated said receipts as royalty/fee for technical services under section 9 and under article 12 of India-Singapore DTAA. DRP affirmed the order of the AO. On appeal the Tribunal held that since in assessee's own case for earlier assessment year 2015-16, on similar facts, it was held that there was no transfer of use or right to use any industrial or commercial or scientific equipments and, thus, amount in dispute would not qualify as royalty. Addition was deleted. (AY. 2020-21, 2021-22)

AAPC Singapore Pte. Ltd. v. ACIT (2024) 207 ITD 774 (Delhi) (Trib.)

S. 9(1)(vi) : Income deemed to accrue or arise in India-Royalty-Fee for technical services-Management service-Support services-Not royalty-DTAA-India-Netherland. [S. 9(1)(vii), Art. 12 (4)] 124

Assessee, Netherlands based dredging contractor, filed its return of income declaring a business loss. VOIPL a subsidiary of assessee in India, had entered into a service agreement with assessee to avail ongoing assistance and support in field of information technology, operations, quality, health & safety estimating and engineering, marketing, administration, personnel, etc.. For rendering above services, assessee had recovered a certain sum from VOIPL, without any mark-up. Assessing Officer had considered said payments to be for use of information concerning industrial, commercial or scientific experience in India and had, accordingly, held same to be taxable as royalty in India. DRP approved the draft assessment order. On appeal the Tribunal held that since for rendering of these services, there was no element of imparting of any know-how or transfer of any knowledge, skill or experience, none of services provided by assessee in terms of 'service agreement' fell within scope and ambit of 'royalty' as defined in article 12(4). Since management services fees charged was on allocation of cost which was without mark-up, same being in nature of reimbursements did not constitute royalty as per India-Netherlands DTAA. (AY. 2020-21)

Van Oord Dredging and Marine Contractors BV v. ACIT (2024) 206 ITD 632 (Mum) (Trib.)

S. 9(1)(vi) : Income deemed to accrue or arise in India-Royalty-Fees for technical services-Educational school-Lump sum fees-Discounts – Deduction of tax at source-Matter is remanded to the file of the Assessing Officer-DTAA-India-Switzerland-UK. [S. 9(1)(vii), 195, Art. 12, 13] 125

Assessee, a foundation, which is engaged in running of an educational school. It had made annual payments under various heads like evaluation fees, authorization fees workshop/training charges, fees for enrolment/registration fees etc. to various foreign

educational institutions in UK and Switzerland. Assessing Officer held that foreign educational institutions were providing services related to use and application of trademarks and hence such payments were taxable in India as royalty as per provisions of article 13 of India-UK DTAA and article 12 of India-Swiss Confederation DTAA. CIT(A) up held the order of the AO. On appeal the Tribunal held that the assesee had not offered explanation regarding basis for raising invoice on assessee and also on what basis discount was offered to assessee by overseas educational institutions even after affording several opportunities to assessee both during course of assessment as well as appellate proceedings. Tribunal held that unless and until nature and basis of raising invoices by overseas educational institutions was clear to tax authorities, it was not possible to come to conclusion that no payments were made for use of trade name/brand of national educational institutions and payment was only for authorizing assessee to act as a mediator between students and educational institutions outside of India. Accordingly the matter is remanded to Assessing Officer to understand basis on which lump sum fee was charged by overseas entities from assessee and also basis for allowing/affording discount to assessee. (AY. 2017-18, 2018-19)
International Education & Research Foundation v. DCIT (IT) 2024] 206 ITD 96 (Ahd) (Trib.)

126 **S. 9(1)(vi) : Income deemed to accrue or arise in India-Royalty-Fees for technical services-Sale of software-Wrongly offered as income in the return-Return was not revised-Not chargeable to tax-Matter remanded to the file of Assessing Officer to verify the facts-DTAA-India-UK [S. 9(1)(vii), 139(5), Art. 13]**
Assessee, a UK based company, which is engaged in providing software development services and sales & marketing support services to its group entities. It had obtained certain receipts from various customers in India which was sale proceeds of off-the shelf software and offered same to tax in India as Royalty Income. During assessment proceedings, assessee claimed that receipts from sale of software had been wrongly offered to tax as income from royalty. The Assessing Officer assessed same as Royalty Income. CIT(A) affirmed the order of the Assessing Officer. On appeal the Tribunal held that the assessee could not be prevented from raising a claim that receipts from sale of software were not chargeable to Indian Taxation merely because such income was wrongly offered in ROI and which was not revised. However, since nature and character of sale proceeds qua underlying evidences did not appear to have been verified by Assessing Officer at any stage of proceedings, matter was to be remitted back to file of Assessing Officer for fresh determination. (AY. 2020-21)
AppDynamics International Ltd. v. ACIT (2024) 205 ITD 496 (Delhi) (Trib.)

127 **S. 9(1)(vi) : Income deemed to accrue or arise in India-Royalty-Taxation of receipts from the sale of software to Indian entities under the India-agreements merely granted the right to use software without transferring copyright ownership-Held, not liable to tax-DTAA-India-Singapore. [Art. 12(3)]**
The Assessee is a Singapore-based entity which received income from the sale of software to Indian entities. The AO treated these receipts as taxable u/s 9(1)(vi) of the Act and Article 12(3) of the India-Singapore DTAA. The Assessee challenged the

AO's order and submitted that the agreements merely granted the right to use software without transferring copyright ownership. It emphasized that the software was licensed to Indian entities for specific business purposes, and modifications were limited to operational needs. The TRIBUNAL scrutinized the clauses of the agreements between the Assessee and Indian entities and noted the discrepancies in the AO's interpretation of the DTA, emphasizing that the contractual terms aligned with the judgment in *Engineering Analysis Centre of Excellence Pvt. Ltd. v. CIT CA Nos. 8735-8736 of 2018*. After considering the arguments and contractual clauses, the Tribunal held that the receipts from software sales to Indian entities were not taxable under the India-Singapore DTAA. (AY. 2020-21)
Finastra International Financial Systems PTE Ltd. v. Asst. CIT(IT) [2024] 109 ITR 36 (SN) /205 ITD 338 (Delhi) (Trib)

S. 9(1)(vii) : Income deemed to accrue or arise in India-Fees for technical services-Non-Resident-Marketing services-No Permanent Establishment in India-Not taxable-Not liable to deduct tax at source-DTAA-India-USA-SLP of revenue dismissed. [S. 201, Art. 12(4), Art. 136] 128

Dismissing the appeal of the Revenue the Court held that the assessee had made payments to the U. S. company. The Tribunal had held that the scope of the work was to generate customer leads using customer database, market research, analysis, and online research data and rightly held that the service provider had not made available any technical knowledge, experience, know-how, process or develop and transfer technical plan or technical design. Accordingly the Tribunal was right in holding that the payments made by the assessee were not taxable in India. Tax was not deductible at source on such payment. SLP of Revenue is dismissed.
CIT (IT) v. Ad2pro Media Solutions (P.) Ltd (2024) 297 Taxman 141 (SC)
Editorial : CIT (IT). v. Ad2pro Media Solutions Pvt. Ltd. (2023)455 ITR 648 /148 taxmann.com 226 (Karn)(HC), SLP dismissed, CIT v. Ad2pro Media Solutions (P.) Ltd. (2023) 157 taxmann.com 205/ 296 Taxman 569 (SC)/ CIT v. Ad2pro Media Solutions (P.) Ltd. (2024) 297 Taxman 226 (SC)

S. 9(1)(vii):Income deemed to accrue or arise in India-Fees for technical services-Software-Sub-contracted certain overseas subsidiary-Not liable to deduct tax at source-Special leave petition filed against said order of High Court is dismissed was to be dismissed as there is gross delay of 296 days and also on merits. [S. 195, 201(1), 201(IA), Art. 136] 129

Assessee is an Indian software development company. Assessee sub-contracted its onsite overseas work to its subsidiary in China and made payment of sub-contracting charges to said subsidiary. Assessing Officer held that payments made to subsidiary in China was liable for tax deduction under section 9(1)(vii) as fees for technical services (FTS) in view of retrospective amendment to section 9 by Finance Act, 2010 and substitution of Explanation to said section. High court held that substitution had taken place in Finance Act, 2010 which was effective from 2011-12, thus, same would not apply to assessee during relevant years. Accordingly the assessee is not liable to deduct tax at source on payments made by it to its subsidiary in China. Special leave petition filed against said

order of High Court is dismissed was to be dismissed as there is gross delay of 296 days and also on merits. (AY. 2009-10, 2010-11)
CIT(IT) v. Infosys Ltd. (2024) 300 Taxman 177 (SC)
Editorial : CIT v. Infosys Ltd (2023) 152 taxmann.com 530 (Karn)(HC)

130 **S. 9(1)(vii) : Income deemed to accrue or arise in India-Fees for technical services-Non-Resident-Marketing services-No Permanent Establishment in India-Not taxable-Not liable to deduct tax at source-DTAA-India-USA- SLP of revenue dismissed. [S. 201, Art. 12(4), Art. 136]**
Dismissing the appeal of the Revenue the Court held that the assessee had made payments to the U. S. company. The Tribunal had held that the scope of the work was to generate customer leads using customer database, market research, analysis, and online research data and rightly held that the service provider had not made available any technical knowledge, experience, know-how, process or develop and transfer technical plan or technical design. Accordingly the Tribunal was right in holding that the payments made by the assessee were not taxable in India. Tax was not deductible at source on such payment. SLP of revenue is dismissed.
CIT v. Ad2pro Media Solutions (P.) Ltd. (2024) 297 Taxman 226 (SC)
Editorial : CIT (IT). v. Ad2pro Media Solutions Pvt. Ltd. (2023)455 ITR 648 /148 taxmann.com 226 (Karn)(HC)/ SLP dismissed, CIT v. Ad2pro Media Solutions (P.) Ltd. (2023) 157 taxmann.com 205/ 296 Taxman 569 (SC)

131 **S. 9(1)(vii): Income deemed to accrue or arise in India-Fees for technical services Deduction of tax at source-Payment to non-resident-Foreign company had not rendered technical services to Indian company-Amount remitted not taxable-Not liable to deduct tax at source-SLP of Revenue is dismissed-DTAA-India-United States of America. [S. 195, 201(1), 201(IA), Art. 12(4), Art. 32]**
Dismissing the SLP of the Revenue the wherein the High Court held that the U. S. Company did not have any permanent establishment in India. The assessee had made payments to the U. S. Company. The scope of the work was to generate customer leads using customer database, market research, analysis, and online research data and rightly held that the service provider had not made available any technical knowledge, experience, know-how, process, or development and transfer technical plan or technical design. The services were utilized in the U. S. A., and the payments made by the assessee were not taxable in India. Hence, Tax was not deductible at source on such payment.
CIT v. Ad2pro Media Solutions (P.) Ltd. (2024) 296 Taxman 569/ 463 ITR 700 (SC)
Editorial : Refer, CIT v. Ad2pro Media Solutions (P.) Ltd (2023) 148 taxmann.com 226/ 455 ITR 648 (Karn)(HC)

132 **S. 9(1)(vii): Income deemed to accrue or arise in India-Fees for technical services-Business connection-Subscription fee-Access to data base pertaining to legal and law related information-Business profits-No permanent establishment in India-Not taxable in India-DTAA-India-USA. [S. 9(1)(1), Art. 5, 7, 12]**
Assessee, a tax resident of USA, was engaged in business of maintaining online data base (Lexis Nexis) pertaining to legal and law related information. It received

subscription fee for providing access to data base-Since assessee had no PE in India, it filed return of income by treating subscription fee received for providing access to data base as business income, not taxable in India as per provisions of India-US DTAA. Assessing Officer, treated receipt of assessee as FIS on ground that same was in nature of technical consultancy. Tribunal held that subscription fee received by assessee was in nature of business profit which could not be brought to tax in India in absence of Permanent Establishment (PE). On appeal the Court held that access to data base did not constitute rendering of any technical or consultancy services and in any case did not amount to technical knowledge, experience, skill, know-how or processes being made available to subscriber neither there was any transfer of copyright. Order of Tribunal is affirmed. (AY. 2018-19, 2019-20)

CIT (IT) v. Relx Inc (2024)470 ITR 611 /160 taxmann.com 109 (Delhi) (HC)

Editorial: Order in Relx Inc v. ACIT (2023) 103 ITR 54(SN) (Delhi)(Trib), affirmed.

S. 9(1)(vii):Income deemed to accrue or arise in India-Fees for technical services-Software-Sub-contracted certain overseas subsidiary-Not liable to deduct tax at source-No substantial question of law. [S. 195, 201(1), 201(IA), 260A] 133

Assessee is an Indian software development company. Assessee sub-contracted its onsite overseas work to its subsidiary in China and made payment of sub-contracting charges to said subsidiary. Assessing Officer held that payments made to subsidiary in China was liable for tax deduction under section 9(1)(vii) as fees for technical services (FTS) in view of retrospective amendment to section 9 by Finance Act, 2010 and substitution of Explanation to said section. High court held that substitution had taken place in Finance Act, 2010 which was effective from 2011-12, thus, same would not apply to assessee during relevant years. Accordingly the assessee is not liable to deduct tax at source on payments made by it to its subsidiary in China. No substantial question of law. (AY. 2009-10, 2010-11)

CIT v. Infosys Ltd (2023) 152 taxmann.com 530 (Karn)(HC)

Editorial : SLP of revenue dismissed as there is gross delay of 296 days and also on merits, CIT(IT) v. Infosys Ltd. (2024) 300 Taxman 177 (SC)

S. 9(1)(vii) : Income deemed to accrue or arise in India – Fees for technical services – "Make Available" test – Business income under DTAA (India–UK) – Service Permanent Establishment – Services utilised outside India- No transfer of skill, technical knowledge, expertise, process-Mere usage or utilisation of research material, technical or consultative material in aid of business not sufficient to attract Article 13 of Double Taxation Avoidance Agreement- Not taxable - The income attributable to the Indian service PE remained taxable as business income under Article 7- DTAA-India-United Kingdom. [S. 9(1)(i), 9(1) (vii) (b),44DA, Art. 5(2)(k), 7, 13] 134

The Assessing Officer held that payments made by BCCI to IMG (UK) for designing and managing the IPL were taxable in India as fees for technical services (FTS) under section 9(1)(vii) and Article 13 of the India–UK DTAA. The Tribunal partly upheld this view, holding that the income was divisible: services attributable to IMG's Indian service PE were taxable in India as business income under Article 7, whereas income attributable to IMG's UK office was not taxable in India. On appeal Court held that the

services performed by IMG UK did not satisfy the "make available" test under Article 13(4)(c) since no technical knowledge, skill or know-how was transferred to BCCI. The Court emphasised that mere furnishing of advice, reports or research material does not constitute transfer of expertise enabling the recipient to act independently in future. It further held that services connected with IPL seasons shifted to South Africa and UAE were utilised outside India and income therefrom arose from sources outside India, hence not taxable under section 9(1)(vii)(b). However, the income attributable to the Indian service PE remained taxable as business income under Article 7. (AY. 2010-11 to 2018-19)

International Management Group (UK) Ltd. v. CIT (IT) (2024) 466 ITR 514 / 164 taxmann.com 225 / 340 CTR 745 (Delhi)(HC)

135 **S. 9(1)(vii): Income deemed to accrue or arise in India-Fees for technical services-Project-specific technical and consultancy services to an Indian company-Did not satisfy the 'make available' clause, did not warrant tax under Article 12(4)(b) of the DTAA between India and the US-DTAA-India-USA. [Art. 12(4)(b)]**

Held that ABB USA provided project-specific technical and consultancy services to an Indian company, that did not satisfy the 'make available' clause, did not warrant tax under Article 12(4)(b) of the DTAA between India and the US. (AY. 2009-10)

CIT (IT) v. ABB Inc [2023] 152 taxmann.com 101 / [2024] 461 ITR 297 (Karn)(HC)

136 **S. 9(1)(vii):Income deemed to accrue or arise in India-Fees for technical services-Global online learning platform-The receipts of the assessee do not qualify as fees for included services under art. 12(4) of India-USA tax treaty-DTAA-India-USA. [S. 144C(13), Art. 12(4)]**

Held that merely because the assessee has a customized landing page, it does not mean that the assessee provides technical services, that too, through human intervention. Even assuming for argument's sake that the services provided by the assessee are of technical nature, that by itself would not be enough to bring such receipts within the purview of art. 12(4) of the DTAA, unless the make available condition is satisfied. The receipts of the assessee do not qualify as fees for included services under art. 12(4) of India-USA tax treaty. (AY. 2020-21, 2021-22)

Coursera Inc. v. ACIT (IT) (2024) 231 TTJ 726 / 242 DTR 41 (Delhi)(Trib)

137 **S. 9(1)(vii):Income deemed to accrue or arise in India-Fees for technical services-User of software-Payment received cannot be taxable as fees for technical services or royalty-DTAA-India-Netherland. [S. 9(1)(vi), 90, Art. 12(5)]**

Held that payment received for user of software is neither fees for technical services nor royalty. Not taxable in India. Appeal of Revenue is dismissed. (AY. 2013-14, 2015-16 & 2016-17)

ACIT (IT) v. Juniper Networks International B. V (2023) 154 taxmann.com 563 / (2024) 227 TTJ 529 / (2024) 234 DTR 49 (Mum)(Trib)

S. 9(1)(vii):Income deemed to accrue or arise in India-Fees for technical services-Interior design services-Payments received by the assessee from RCITP are fees for technical services falling under cl. (4) of art. 12 of the DTAA-India-Singapore. [S. 90, 144C(5), 144(13), Art. 12] 138

The Tribunal held that the payments received by the assessee from RCITP are fees for technical services falling under cl. (4) of art. 12 of the DTAA, rightly taxed at 10 per cent. (AY. 2016-17)

Gensler Singapore (P) Ltd. v. JCIT /(2023) 155 taxmann.com 207/ (2024) 227 TTJ 998 / 234 DTR 193 (Delhi)(Trib)

S. 9(1)(vii): Income deemed to accrue or arise in India-Fees for technical services-Salary-Expatriate employees-Tax deducted at source-Reimbursed by Indian subsidiary on cost-to-cost basis-Reimbursement is not taxable--Not fees for technical services-Not liable for tax deduction at source-DTAA-India-Japan. [S. 192, 195, Art. 12] 139

Held that no material or evidence had been brought on record by the Revenue to substantiate its claim that the assessee rendered any managerial, consultancy or technical services to the Indian associated enterprises through the expatriates in furtherance of its business in India. The payment made by the Indian associated enterprises was purely reimbursement of the expatriates' salary costs, which the assessee had cross-charged by raising debit notes on the Indian associated enterprises. It could not be regarded as "fees for technical services" in the hands of the assessee as it was taxable as salary in the hands of the expatriate employees, who worked under the direct control and supervision of the Indian associated enterprises, and during the entire period of secondment, the associated enterprise were the real and economic employer of these expatriates. The expatriates had offered the entire salary income to tax in their respective returns of income as supported by form 16. As a result, the receipts were in the nature of employees' salary reimbursement cost, not having any element of income and not taxable in India as fees for technical services under the Double Taxation Avoidance Agreement between India and Japan. Consequently, the addition made on account of assessee's cross-charge raised on its Indian associated enterprises is deleted. (AY. 2017-18)

Advics Co. Ltd. v. ACIT (2024)113 ITR 147/ 232 TTJ 178 (Delhi) (Trib)

S. 9(1)(vii):Income deemed to accrue or arise in India-Fees for technical services-Royalty-Non-Resident-Information technology and systems, applications and products service agreement with Indian subsidiary-Receipt is not fees for technical services and not taxable in India-DTAA-India-Portugal. [S. 9(1)(vi), Art. 12(4)(a), 12(4)(b), 13] 140

Held, that the services rendered under information technology and systems, applications and products support service agreement were completely different in nature and had no connection with the services rendered under the technical collaboration agreement. While the services rendered under the service agreement were for day-to-day office functioning and maintenance of the information technology infrastructure, the services rendered under the technical collaboration agreement were purely and strictly in connection with the drip irrigation system required for agricultural purposes. Therefore, the services rendered under the services agreement could not be considered ancillary and subsidiary to the services rendered under technical collaboration agreement. Further,

they did not relate to application or enjoyment of right to property or information resulting in payment of royalty. Not taxable in India. (AY. 2014-15, 2015-16)
Netafim Ltd. v. Dy. CIT (IT) (2024)113 ITR 548 (Delhi)(Trib)

141 **S. 9(1)(vii):Income deemed to accrue or arise in India-Fees for technical services-Network fees from its Indian AE-Neither royalty nor fees for technical services-Not taxable in India-DTAA-India-Netherlands. [S. 4, 9(1)(vi), Art. 7, 12]**
Assessee is engaged in business of logistics and freight forwarding across globe. During relevant assessment year, assessee earned network fees from its Indian associate enterprise (AE). Assessee did not offer said fees to tax on ground that it did not have any permanent establishment (PE) in India and network fees were business income. Assessing Officer held that network fees were in nature of fees for technical services (FTS) as per explanation 2 to section 9(1)(vii) and is taxable in India. DRP affirmed the order of the AO. On appeal the Tribunal held that Tribunal in assessee's own case for earlier assessment years had held that nothing was brought on record to substantiate that any technical know how was made available to Indian AE and thus, network fees received by assessee from its Indian is deleted. (AY. 2021-22)
Maersk Logistics & Services International B. V. v. DCIT, IT (2024) 209 ITD 95 (Mum) (Trib.)

142 **S. 9(1)(vii):Income deemed to accrue or arise in India-Fees for technical services-commercial information is transferred to end user-Not taxable as fee for included services-Installation and integration services-Not taxable as fees for technical services-DTAA-India-USA[Art. 12(4)(b)]**
Assessee paid software licensing fee to a US company. Assessing Officer held that payment is in nature of fee for included services as per article 12(4)(b) of India-US DTAA and section 9(1)(vii). DRP affirmed the order of the AO. On appeal the Tribunal held that only commercial information was transferred to end user and not technical knowledge as required under article 12(4)(b) to constitute fee for included services, said payment could not be taxed as fee for included services. Tribunal also held that installation and integration services provided by assessee to US company were merely support services dealing with installation and integration and when primary services themselves were not taxable as FTS, these ancillary services qua primary services could not be taxed as FTS. (AY. 2021-22)
Mixpanel, Inc. v. ACIT (2024) 209 ITD 508 (Delhi) (Trib.)

143 **S. 9(1)(vii):Income deemed to accrue or arise in India-Fees for technical services-Marketing services-Commission on sales-Subsidiary of SEPL India-Performed pure sales function by connecting potential customers from US by performing pre sales activity of introducing SEPL India-Not taxable in India-DTAA-India-USA[Art. 12]**
Assessee, a US based company is subsidiary of SEPL India. Assessee-company procured local sales orders in US for its AE for products to be manufactured, executed by SEPL India, and received payment from customers which was remitted to SEPL India. Assessee received certain sum as commission on sales and marketing services. Assessing Officer held that payments received by assessee from SEPL India were in nature of FTS under section 9(1)(vii) and was chargeable to tax in India under article 12 with Indo-USA DTAA. On appeal the Tribunal held that the assessee, performed pure sales

function with connecting potential customers from US by performing pre sales activity of introducing SEPL India to potential customers and rest of activity was predominantly taken care by SEPL India. The assessee did not render services resulting in provision of FTS or make available technical knowledge to SEPL India. Accordingly commission on sales and marketing services cannot be treated as FTS in hands of assessee in terms of section 9(1)(vii). (AY. 2013-14, 2014-15)
Steer America Inc. v. DCIT (IT) (2024) 208 ITD 262 /[2025] 121 ITR 431 (Bang) (Trib.)

S. 9(1)(vii): Income deemed to accrue or arise in India-Fees for technical services-Deduction of tax at source-Non-Resident-Software development services rendered to overseas client-No transfer of specialised technical knowledge-Not fees for technical services-Not liable for tax deduction at source-DTAA-India-USA [S. 195, Art. 12] 144
Held that the fact that provision of services may require technical input by the person providing the service did not mean that technical knowledge, skills, etc., were "made available" to the person purchasing the service. Therefore, payment made by the assessee to the non-resident service provider could not be brought under article 12 of the Double Taxation Avoidance Agreement. (AY. 2010-11, 2012-13, 2013-14, 2016-17, 2017-18)
Dy. CIT (OSD) v. Aspire Systems India P. Ltd. (2024) 110 ITR 1 / 232 TTJ 387 (Chennai) (Trib)

S. 9(1)(vii):Income deemed to accrue or arise in India-Fees for technical services-Providing hotel related services to hotels worldwide-Revenue is not in nature of royalty or fees for technical services-No Permanent Establishment in India-Receipt is not taxable as business income-DTAA-India-USA,[S. 9(1)(i), 9(1)(vii),, Art. 7, 12(4)] 145
Held, dismissing the appeal of the Revenue the Tribunal held that the included services were ancillary or auxiliary in nature and being an integral part of the job undertaken by the assessee, they were neither independent of, nor separable from, the job undertaken by the assessee in relation to publicity, advertisement and sales promotion of the hotel business worldwide, which were the main services rendered by the assessee to the Indian company, keeping the use of trademark, trade name and other enumerated services incidental to the main service, and that, thus, the payments received were neither in the nature of royalty under section 9(1)(vi), Explanation 2 nor in the nature of fees for technical services under section 9(1)(vii), Explanation 2 but in the nature of business income not taxable in India owing to the absence of a permanent establishment for the assessee in India. Order of CIT(A)) is affirmed. (AY. 2021-22)
ACIT v. Westin Hotel Management L. P. (2024) 111 ITR 69 (Delhi)(Trib)

S. 9(1)(vii): Income deemed to accrue or arise in India-Fees for technical services-Supply of drawings and designs-Plant and equipment supplied from outside India and sale transaction concluded outside India-Receipts cannot be taxed in India-Amount not taxable in India-Receipts from supervisory services for erection and Commissioning of equipment-Amount received falls within definition of fees for technical services-DTAA-India-Switzerland, Switzerland. [Art. 12(4)] 146
Held that the designs and drawings were made outside India in Switzerland and were supplied to the contractee from Switzerland and the sale transaction was completed

in Switzerland and amounts were received in Switzerland. From the details of designs and drawings as well as documentation submission, schedule of drawings and designs, it was clear that the drawings and designs supplied by the assessee were specifically related to the supply of plant and equipment for the JSW steel project. Though both the contracts, one for supply of plant and equipment and the other for supply of drawings and designs had been separately executed, they had been executed on the very same date. The purchaser was vested with the right to terminate the contract unilaterally, inter alia, due to the delay in delivery of the equipment in excess of 120 days for the reasons solely attributable to the seller and if the seller failed to take necessary remedial action. Thus, failure to supply plant and equipment within the stipulated time period could determine the contract for supply of drawing and design and the purchaser could terminate the contract in that eventuality. Therefore, the contract for supply of drawings and designs was inextricably linked to the contract for supply of plant and equipment. When the supply of plant and equipment had been treated as sale transaction completed outside India, and hence, not taxable in India, the sale and supply of drawings and designs being inextricably linked to sale and supply of plant and equipment had to be considered cumulatively and as a part of sale and supply of plant and equipment. Therefore, the amount received by the assessee from supply of drawings and designs was not taxable in India as fees for technical services. Tribunal also held that the assessee had entered into a contract for supply of electromagnetic stirrer. According to the assessee's admission, technical personnel were deputed to supervise the erection and commissioning of the plant and equipment. Thus, in course of such supervisory activity, the qualified technical personnel deputed by the assessee must have imparted technical services for erection and commissioning of the plant and equipment. Therefore, the amount received fell within the definition of fees for technical services, both under the domestic law as well as under article 12(4) of the Double Taxation Avoidance Agreement and it was immaterial whether the assessee had a permanent establishment in India or not. Therefore, the amount having qualified as fees for technical services, had rightly been brought to tax in the hands of the assessee. (AY. 2008-09)
SMS Concast AG v. DDIT (IT) (2024) 110 ITR 138 (Delhi)(Trib)

147 **S. 9(1)(vii) : Income deemed to accrue or arise in India-Fees for technical services-Reimbursement of expenses-Not fees for technical services-Living allowance-No employer and employee relation ship-Agency commission-Not liable to deduct tax at source-Article 12 of OECD Model Convention-Levy of interest is not barred by limitation. [S. 192, 194J 195, 201]**

The Assessee, an Association of Persons (AOP) engaged in providing technical expertise in oil exploration and refinery, made payments to its member companies for the salary expenses and other benefits of seconded employees without deducting TDS. The Assessing Officer held that the reimbursements constituted fees for technical services as per Explanation 2 to section 9(1)(vii), making TDS deductible under section 194J for resident secondees and section 195 for non-resident secondees and payments to foreign agents. CIT(A) deleted the disallowance. On appeal the Tribunal held that, reimbursements for Indian salary and other benefits to member companies were not fees for technical services within the meaning of Explanation 2 to section 9(1)(vii),

hence TDS was not deductible. Payments made to resident secondees did not require TDS under section 194J as there was no employer-employee relationship between the Assessee and the secondees. Payments made to non-resident secondees were not chargeable to tax under section 5(2)(b) as the services were rendered outside India, thus no TDS was required under section 195. Payments to foreign agents did not attract TDS under section 195 as there was no business connection in India, and the agents did not perform any operations in India. The Tribunal also held that levy of interest is not barred by limitation. (AY. 1996-97 to 1998-1999)
ITO (TDS) v. Petroleum India International (2024) 111 ITR 365 (Mum.) (Trib)

S. 9(1)(vii) : Income deemed to accrue or arise in India-Fees for technical services-Marketing contribution, priority club receipt and reservation contribution with Indian hotels for using trade marks and providing support programs and systems-Fees received from Indian Hotels is not royalty-Addition is deleted-DTAA-USA. [Art. 12(3)] 148
The assessee, a tax resident of USA, had entered into licence agreements with various Indian hotels allowing them the use of trademarks 'Holiday Inn' and 'Crowne Plaza' in the business. The Royalty income earned was offered to tax in India. However, the marketing contribution and reservation fees received by the assessee from hotels in India were claimed as not taxable on the basis that the same is in the nature of reimbursement of common expenses. However, while completing the assessment u/s 143(3) rws 144C (3), the AO held it to be part of Royalty and added the same as income of the assessee. The CIT (A) upheld the addition. On further appeal, it was pleaded that the money received on account of marketing contribution and reservation fees were with a corresponding obligation to use it for the agreed purposes. The fund so created was obligated to expend assessment proceeds on behalf of the hotels and the fund's objective is to be self-funded each year. The report of independent auditor was filed in support thereof. Taking into account orders of the coordinate benches in the case of other assessee as well as assessee's own case for other assessment years, the Tribunal held that the marketing contribution and reservation fees received by the assessee was not royalty and therefore, the impugned addition was deleted. (AY. 2012-13, 2013-14, 2014-15, 2015-16)
Six Continents Hotels, Inc. v. Dy. CIT (IT) (2024) 112 ITR 423 (Mum)(Trib.)

S. 9(1)(vii): Income deemed to accrue or arise in India-Fees for technical services-Income from providing worldwide marketing, advertising and other services-Services were provided from outside India-Income is in not fees for included services and is business income-Not taxable in India-DTAA-India-USA. [Art. 7, 12(4)] 149
The assessee is engaged in providing worldwide Marketing and advertising services to Indian hotel owners through worldwide system of sales, advertising, promotion, Public relations, etc. Services are provided from outside India. Assessee does not have any PE in India. Assessee claimed refund of TDS deducted by Indian hotels and claimed income received from Indian Hotels to be exempt as per Section 9(1)(vii) and Article 7 of India-USA DTAA, as the centralized services provided by Sheraton Overseas from outside India cannot be treated as Fees for Included Services under Article 12(4) of India-USA DTAA as it were not technical in nature and further 'make available' condition of Article

12 of India-USA DTAA was not satisfied, and, as a natural corollary, the income was held to be business income as per Article 7 of India-USA DTAA, not taxable in India. The Hon'ble ITAT relied on the decision of Hon'ble Delhi High Court in the case of Sheraton International Inc. (group concern of the assessee) (2009) 313 ITR 267 (Delhi) (HC) and earlier decision of Delhi ITAT in assessee's own case upheld by the Delhi High Court. (AY. 2021-22)

ACIT v. Sheraton Overseas Management Corporation (2024) 112 ITR 126 (Delhi)(Trib.)

150 **S. 9(1)(vii):Income deemed to accrue or arise in India-Fees for technical services-Human resource screening services for clients in India-Reports provided to clients about candidates proposed to be hired not copyrightable but bound by confidentiality-Receipts is neither taxable as royalty nor as fees for technical services-DTAA-India-United Kingdom. [S. 9(1)(vi), Art. 7, 13(4), Copyright Act, 1957 13(1), 14(a)]**

Held that the role of the assessee was restricted to verification of the information concerning various candidates proposed to be hired by its clients. The information collected by the assessee was not protected by any copyright, but its circulation was regulated under the U. K., and other local laws, which cast a duty upon it to ensure the confidentiality of the reports as they contained details of the applicants. None of the requisites under article 13(3) of the Double Taxation Avoidance Agreement was satisfied so as to qualify such receipts as "royalty". The assessee was merely providing a report summarising its findings with respect to the background check undertaken by it, which report constituted factual data and could not per se qualify as literary, artistic or scientific work, patent, trademark, design, model, plan, secret formula or process or information. It did not fulfil the requirements enlisted under section 13(1)(a) of the Copyright Act, 1957. Moreover, none of the rights mentioned in section 14(a) thereof had been vested with the client by the assessee. The client did not have any right to publicly display, sell, distribute, copy, edit, modify or commercially exploit the report. The consideration received by the assessee was purely towards provision of background screening services and not for use, or right to use, any copyrightable material. Further, the assessee did not provide access to any database to its clients but only access to reports requisitioned by the client, in electronic form. Nothing had been brought on record by the Revenue to refute the assessee's claim. Online access to background screening results was not tantamount to providing access to the database maintained by the assessee. That the information obtained by the assessee from various sources was in the nature of factual data about prospective candidates, which did not involve imparting any kind of commercial experience, skill or expertise. It was a validation report assuring its client about the authenticity of the information contained therein. It did not involve any transfer of either commercial experience or the right to use the experience, nor transfer of any skill or knowledge of the assessee to the customers. As the assessee's services did not involve any technical skill, knowledge or consultancy or make available any technical knowledge, experience, skill, know-how or processes to the clients, the services should not be considered fees for technical services under article 13(4) of the Double Taxation Avoidance Agreement. No addition could be made on account of royalty(AY. 2021-22)

Hireright LLC v. Dy. CIT (IT) (2024) 111 ITR 28 (Delhi)(Trib)

S. 9(1)(vii):Income deemed to accrue or arise in India-Fees for technical services-Data processing charges-Data processing charges paid to its Singapore branch office-Payment could not be taxed as fees for technical services either under Income-tax Act and India-Singapore DTAA-DTAA-India-Singapore. [S. 90, Art. 12] 151

Allowing the appeal the Tribunal held that Indian branches of assessee, a French bank, paid data processing charges to its Singapore branch office, said payment could not be taxed as fees for technical services either under Income-tax Act and India-Singapore DTAA. (AY. 2021-22)

BNP Paribas v. ACIT (2024) 207 ITD 532 (Mum)(Trib.)

S. 9(1)(vii) : Income deemed to accrue or arise in India-Fees for technical services-Telecom and transmission services-Reimbursement from its Indian subsidiary for provision of connectivity services for international communication-Cannot be treated as fees for technical services-DTAA-India-Hong kong. [Art. 12] 152

Assessee, a Hong Kong based company, which is engaged in business of distribution of telecommunication products. During relevant assessment years, assessee received reimbursement of connectivity charges from its AE, Indian subsidiary for provision of connectivity services for international communication. Assessing Officer held that the assessee provided plethora of services to its AE right from negotiating agreements with third parties entering into purchase agreement, to issuing inspection certificates certifying products and services-He, thus held that these services would fall within ambit of technical consultancy' or managerial services and would qualify as fees for technical services under section 9(1)(vii). DRP affirmed the order of the AO. On appeal the Tribunal held that from purchasing service agreement between assessee and AE that all activities agreed to in writing by and between company and service provider were considered as steps involved in processing product purchased as per purchasing service agreement and could not be treated as other technical services. Since assessee was only paid for connectivity services which were merely ancillary to enabling provision of inter-connect services and part of processing product, same could not be treated as technical or managerial or consultancy services. Amount received by assessee could not be regarded as FTS under section 9(1)(vii) of the Act. (AY. 2018-19, 2019-20)

Huawei International Co. Ltd. v. ACIT (IT) (2024) 207 ITD 497 (Delhi) (Trib.)

S. 9(1)(vii):Income deemed to accrue or arise in India-Fees for technical services-Make available-Payments made to US company for administrative and IT services-Can not be treated to be in nature of FTS-Not liable to deduct tax at source-DTAA-India-USA. [Art. 12(4)(b)] 153

Assessee, an Indian company, made payments to its US parent company (AE) towards administrative services, IT services, technical services and royalty without deduction of tax at source. Assessing Officer held that since foreign party performed all administrative services as part of group global policies to maintain control over employed staff in India, services were in nature of managerial service. CIT(A) affirmed the order of the AO.. Tribunal held that though Assessing Officer had observed that AE had made available technical knowledge to assessee, but had failed to bring on record any relevant material

to support same and, consequently, payments made by assessee could not be treated to be in nature of FTS. (AY. 2013-14)
Herbalife International India (P.) Ltd. v. DCIT (IT) (2024) 207 ITD 658 (Bang) (Trib.)

154 **S. 9(1)(vii):Income deemed to accrue or arise in India-Fees for technical services-Make available-Business of cloud and hosting services, disaster recovery services, etc-Indian customer-Not taxable in India-DTAA-India-USA. [Art 12]**
Assessee is a foreign firm situated in USA, which is engaged in business of cloud and hosting services, disaster recovery services, and IT consultancy services. It received certain amount from its Indian customer and claimed said income to be not taxable in India. Assessing Officer taxed said receipts as fees for technical services. DRP up held the addition. On appeal the Tribunal held that very same issue in assessee's own case was decided in favour of assessee by Tribunal for earlier assessment years 2017-18 to 2019-20 holding that article 12(4)(b) stipulates taxability of income arising therefrom only if services concerned make available technical knowledge to recipient/payer. Since condition of make available had not been satisfied, services would not be taxable in India. (AY. 2020-21)
Sungard Availability Services LP v. ITO (IT) (2024) 206 ITD 10 (Pune) (Trib.)

155 **S. 9(1)(vii):Income deemed to accrue or arise in India-Fees for technical services-Freight/logistic support services-Cannot be treated as FTS/FIS either under Act or under India-USA DTAA-Reimbursement of global account management charges is not in nature of FTS/FIS-DTAA-India-USA-Reimbursement of lease line charges for services rendered outside India could not be treated as royalty under Act as well as India-USA DTAA. [Art. 12]**
Assessee, a US company, which is engaged in business of providing global freight logistics services worldwide. Assessing Officer made additions to income of assessee on account of sale of logistic services treating same as Fees for Technical Services ('FTS') under Act as well as India-USA DTAA. DRP up held the order of the Assessing Officer. On appeal Tribunal following assessee's own case in earlier year held that amount received by assessee from freight/logistic support services could not be treated as FTS/FIS. Consequently, amount received by assessee in question could not be treated as FTS/FIS or royalty under Act as well as India-USA DTAA. Held that the amount received by assessee, a non-resident company, for reimbursement of global account management charges for services rendered outside India could not be treated as royalty under Act as well as India-USA DTAA. Held that the amount received by assessee, a non-resident company, for reimbursement of lease line charges for services rendered outside India could not be treated as royalty under Act as well as India-USA DTAA. (AY. 2021-22)
Expeditors International of Washington Inc. v. ACIT (2024) 206 ITD 267 (Delhi) (Trib.)

S. 9(1)(vii):Income deemed to accrue or arise in India-Fees for technical services-Managing diamond factories and facilitating diamantaires to operate economically for high quality diamond factories across the Globe-FTS income received by assessee would not be taxable in India-DTAA-India-Mauritius. [S. 9(1)(i), 115A(1)(b)), Art. 12, 12A] 156

Assessee, a tax resident of Mauritius, which is engaged in business of managing diamond factories and facilitating diamantaires to operate economically for high quality diamond factories across the Globe. It had entered into a technical collaboration with its Associated Enterprises [AEs] in India viz., for providing technical, process, marketing and sales assistance services outside India and received fees for technical services (FTSs). Assessing Officer invoking provisions of section 9(1)(vii) read with section 115A(1)(b) and held that FTS were chargeable to tax in India. CIT(A) up held the order of the AO. On appeal the Tribunal held that there was no specific clause in DTAA entered into between India and Mauritius and article 12A was inserted with effect from 1-4-2017 which could not be applied for financial year 2017-18. It is a settled position of law by various co-ordinate benches and High Courts that in absence of a clause in DTAA not dealing with a particular item of income, payments are not be regarded as residuary income but as business income which is not chargeable to tax in India, in absence of any PE of non-resident assessee in India. Accordingly the FTS income received by assessee would not be taxable in India. (AY. 2017-18)

Diamond Manufacturing Management and Consultancy Ltd. v. ACIT (IT) (2024) 112 ITR 301 / 206 ITD 412 (Vishakha) (Trib.)

S. 9(1)(vii) : Income deemed to accrue or arise in India-Subscription fee-Fees for technical services-Subscription payments, training and professional fees-No transfer of technology-DTAA-India-Netherlands [Art. 12] 157

Assessee, a non-resident company, had received certain amount of consideration on account of subscription payments, training and professional fees. Assessing Officer held that said receipts were taxable as fee for technical services under article 12 of India-Netherlands DTAA. DRP up held the order of the Assessing Officer. On appeal the Tribunal held that since assessee had merely granted only access to software and there was no transfer of technology by assessee, services rendered by assessee did not fall within definition of FTS. (AY. 2020-21, 2011-22)

Service Now Nederland BV v. ACIT (2024) 204 ITD 775 (Delhi) (Trib.)

S. 10(1) : Agricultural income-Soil placed on trays-Agricultural activity-Mushroom is an agricultural product-Income from sale of mushrooms constitutes agricultural income. [S. 2(IA)] 158

Held that soil is a part of land and, therefore, part of earth. The only part of the land that is cultivable is the soil, which is the top layer of land. When soil is placed on trays, it did not cease to be land and operations carried out on that soil would be agricultural activity. Whether such soil was attached to the land or placed in containers above the land made no difference. Soil which is placed on a vertical space above the land in trays is also land. That the word product could not be restricted to plants, fruits, vegetables or such botanical life only. The only condition was that the product should

be raised on the land by performing some basic operations. Mushroom is a product raised on land or soil by performing certain basic operation. It drew nourishment from the soil and was grown by human skill and labour. The product had utility for consumption, trade and commerce and, hence, would qualify as an agricultural product the sale of which gave rise to agricultural income. (AY. 2020-21)
Fresh Bowl Horticulture P. Ltd. v. ITO (2024)116 ITR 3 (SN)/ 169 taxmann.com 49 (Mum) (Trib)

159 **S. 10(1) : Agricultural income-Books of account-Agriculturist-No requirement to maintain books of account under section 44AA for agriculturists to claim exemption under section 10(1). [S. 44AA]**
Assessee is a director of a seed company and graduate in agricultural science, claimed exemption on agricultural income under section 10(1). Assessing Officer added agricultural income to taxable income, citing lack of books of account as required under section 44AA of the Act. CIT(A) affirmed the order of the AO. On appeal the Tribunal held that requirement to maintain books of account under section 44AA does not include agriculturist. Since the assessee submitted copies of sales bills for agricultural produce, even though to related parties and consistently declared agricultural income over years addition is deleted. (AY. 2015-16)
Ishwar Chander Pahuja v. ACIT (2024) 209 ITD 52 (Delhi)(Trib.)

160 **S. 10(10AA) : Leave salary-Limit prescribed-Employee of the Central Government or State Government-State Bank of India-Retired employee of State Bank of India-Not violative of Article 14 of Constitution of India. [Art. 14, 15, 226, Central Civil Services (Leave)Rules 1972]**
Assessee retired from services of State Bank of India and claimed exemption u/s10(10AA) of the Act. The exemption is denied. The assessee contended that law discriminating the Central or State services, in case of employees of other establishments, period of leave was capped at 10 months and maximum amount exempted from income tax was subject to such limit as Central Government might notify in Official Gazette, that same being in year 2017 to be Rs. 3 lakhs was discriminatory and hence be declared ultra vires. On writ the Court held that State has wide discretion in matter of classification for taxation purposes. Accordingly the differentiation made by State between employees of Central and State Governments on one hand and employees of other establishments on other in section 10 (10AA) was neither discriminating nor violative of article 14 of Constitution. Therefore, a retired employee of State Bank of India could not claim parity with employees of Central and State Government. Writ petition is dismissed.
Purnendu Shekhar Sinha v. UOI (2024) 471 ITR 186 /159 taxmann. com 746 (Patna) (HC)

S. 10(10AA) : Leave salary-Superannuation benefits-Employee of the Central Government or State Government-Maharashtra State Electricity Board (MSEB)-Transferred to power companies-Grand-fathering-Assessees have to be treated as employees of a State Government and eligible for S.. 10(10A) and 10(10AA) benefits. [S. 10A, Electricity Act, 2003, 131, 133 (2)] 161

Assessees had joined the then Maharashtra State Electricity Board (MSEB) in regular employment. All of them ended up retiring from the re-designated power companies constituted under the provisions of the Electricity Act, 2003. The AO denied the exemption which is affirmed by the CIT(A). On appeal the Tribunal held that going by a conjoint reading of s. 131 r/w s. 133 of Electricity Act, 2003, the services of all officers and employees of the erstwhile MSEB first stood vested in the State Government of Maharashtra on Reorganization of the Board, followed by the transfer to various transferee entities engaged in generation, transmission and distribution of power. All these assessees had been assigned to their respective new employers after getting protection of their service conditions in the light of S. 133(2). These assessees have also undergone the very reorganization finally culminating in their respective superannuation. Not only these assessees have to be held entitled for exemption under S. 10(10A) and 10(10AA) as employees of MSEB, they are also eligible for the exemption in the newly set-up transferee entities. Therefore, these assessees have to be treated as employees of a State Government duly eligible for ss. 10(10A) and 10(10AA) benefits. (AY. 2018-19, 2019-20)

Mohan Baliramji Thakre v. ITO (2024) 229 TTJ 678 / 237 DTR 233 / 166 taxmann.com 158 (SMC) (Nagpur)(Trib)

S. 10(10D) : Life insurance policy-Key man insurance policy-If Keyman Insurance policy was transferred before its maturity then it would lose its character and thus sums received on surrender of such insurance policy would be eligible for exemption under section 10(10D) and it could not be taxed under section 28(vi). [S. 2(14), 28(vi)] 162

Assessee claimed exemption under section 10(10D) in respect of sums received on maturity of life insurance policy. Assessing Officer deemed it taxable under section 28(vi) as part of a Key man Insurance policy. In appeal, assessee argued that policy's character changed in 2008 when it was assigned from a proprietorship concern to assessee, justifying exemption under section 10(10D) as an ordinary policy. The Tribunal held that there was some merit in contention of assessee that if policy was transferred before its maturity then it would lose its character. Therefore, it had become ordinary policy, premium received under this policy, would not be subjected to tax in view of section 10(10D). Therefore, lower authorities were not justified in denying benefit of exemption to assessee. (AY. 2016-17)

Mihir Parikh v. ACIT (2024) 205 ITD 731 (Delhi) (Trib.)

S. 10(23C) : Educational institution-Charitable purpose-Order of High Court affirmed-SLP of Revenue is dismissed-Delay of 247 days-Review petition is dismissed on account of delay as well as on merits. [S. 2(15), 10(23C)(iv), Art. 136] 163

The High Court, following its decision in the assessee's case in *India Trade Promotion Organization v. DGIT (E) [2015] 371 ITR 333 (Delhi)(HC)* held that the Tribunal did not

err in granting exemption to the assessee under section 10(23C)(iv) of the Income-tax Act, 1961 for the AY. 2009-10, 2010-11 and 2011-12. SLP of Revenue was dismissed. Review petition of Revenue is dismissed on account of delay as well as on merits. (AY. 2009-10 to 2011-12)

CIT (E) v. India Trade Promotion Organization (2024) 299 Taxman 454/338 CTR 875 (SC)

Editorial : CIT (E) v. India Trade Promotion Organisation (2023) 454 ITR 799 / 294 taxman 1 (SC)

164 **S. 10(23C): Educational institution-Commissioner (E) and Tribunal failed to examine objects and record finding with respect to education or educational activities of assessee-Matter remanded. [S. 10(23C)(iii), 260A]**

The Tribunal held that the assessee was unable to furnish necessary information before the Commissioner (E) hence dismissed the appeal of the assessee. On appeal High Court remitted the matter to the file of the CIT(E) to decide a fresh after considering the ratio in *New Noble Educational Society v. CCIT (2022) 448 ITR 594 (SC)*

Shaheed Nand Kumar Patel Vishwavidyalaya v. CIT (E) (2024)468 ITR 334 / 167 taxmann.com 138/341 CTR 170/242 DTR 289 (Chhattisgarh)(HC)

165 **S. 10 (23C): Educational institution-Solely for educational purposes and not for profit-Substantial grant of finance from Government-Order of Tribunal is affirmed. [S. 10(23C)(iiib), 11, 260A, R. 2BBBB]**

Dismissing the appeal of the Revenue the Court held that since the Assessing Officer in his order had reached the conclusion that the assessee had claimed exemptions under section 10(23C)(iiiab) since it was substantially financed by the Government of more than 20 per cent., and expenditure had been incurred by the assessee towards its aims and objects in carrying out educational activities alone, the exemptions were rightly granted. The Tribunal had found that rule 2BBB of the Income-tax Rules, 1962 was not applicable during the assessment year 2012-13, since it came into force with effect from December 12, 2014. There was no error in the orders passed by the Tribunal and the Assessing Officer and, therefore, need not be interfered with. No substantial question of law. (AY. 2012-13)

CIT (E) v. Swami Ganga Giri Janta Girls College (2024)466 ITR 393 /162 taxmann.com 677 (P&H)(HC)

166 **S. 10(23C) : Charitable institution-Promoting, advancing and protecting trade, commerce and industry in India--Matter was remanded to Chief Commissioner for de novo consideration by applying law as laid down by Tribunal. Matter remanded. [S. 2(15), 10(23C)(iv), Art. 226]**

Assessee, an institution formed and established with primary object of promoting, advancing and protecting trade, commerce and industry in India, applied for grant of approval under section 10(23C)(iv) for assessment year 2014-15. Chief Commissioner held that assessee was not a charitable institution and by invoking provisions of proviso to section 2(15) rejected application. On writ, the Assessee submitted before High Court that Tribunal in its own case for assessment years 2016-17 and 2017-18 by an order had set aside order of rejection passed by Commissioner (E) and held that assessee was entitled to exemption under section 10(23C)(iv). Court held that since order of Tribunal

for assessment years 2016-17 and 2017-18 had been passed after impugned order was passed, matter was to be remanded to Chief Commissioner for de novo consideration by applying law as laid down by Tribunal. Matter remanded. (AY. 2014-15)
Indian Merchants Chamber v. ACIT (2024) 299 Taxman 62 (Bom.)(HC)

S. 10 (23C): Educational institution-Hospital-Controlled and funded by State Government-Matter remanded to the file of the AO for de novo adjudication. [S. 10(23C)(iiiac)] 167
Held that the assessee-society is created for the purpose of improvement of medical facilities for the general public as per the direction of the Health and Family Welfare Department of the State Government; funds are provided by the State Government in the form of grant-in-aid; since the lower authorities have not considered the claim of the assessee that it is entitled to benefit of "State" and exemption under s. 10(23C)(iiiac), the issues are restored to the AO for de novo adjudication. (AY. 2003-04 to 2007-08)
Swasthya Bikash Samity v. ITO (E) (2024) 230 TTJ 526 / 240 DTR 51 / 164 taxmann.com 756 (Cuttack) (Trib)

S. 10 (23C): Educational institution-Proviso to Section 143(3) requiring withdrawal of approval before denial of exemption on ground of contravention-Assessing Officer has no jurisdiction to reopen assessment. [S. 10(23C)(vi), 143(3)] 168
Dismissing the appeal of the Revenue the Tribunal held that the Assessing Officer's compliance with clauses (i) and (ii) of the first proviso to section 143(3) inserted by the Finance Act, 2002 with effect from April 1, 2003, which stated that no order of assessment shall be made by the Assessing Officer without giving effect to section 10 unless the Assessing Officer has intimated the Central Government or the prescribed authority that clause (23C) of section 10 had been contravened by the assessee. Only after the approval granted had been withdrawn, could he have proceeded to pass an order, denying the benefit of exemption on the ground of contravention. The disallowance is deleted. (AY. 2013-14)
Dy. CIT (E) v. Mahindra International School Academy (2024)116 ITR 712 / 172 taxmann.com 159 (Pune)(Trib)

S. 10(23C): Educational institution-Merger of three trusts-Multiple objects-Not solely for purpose of education-Not entitle to exemption. [S. 10(23C)(vi)] 169
Held that the assessee is not existing solely for the purpose of education. The assessee did not submit documentary evidence to establish its contention that such scholarships were in fact been used by those students for the purpose of education. Denial of exemption is affirmed. (AY. 2018-19)
Parul Arogya Seva Mandal Trust v. CIT (E) (2024)114 ITR 287 (Ahd)(Trib)

S. 10(23C): Educational institution-Accumulation of funds-Disallowance cannot be made under section 13 of the Act-Entitle to exemption. [S. 10(23C)(iv), 11, 12A, 13(1)(c)] 170
Dismissing the appeal of the Revenue the Tribunal held that since the assessee is a charitable society notified under section 10(23C)(iv), the conditions prescribed under section 13 thereof were not applicable to it per the Central Board of Direct Taxes

Circular No. 557, dated March 19, 1990 (1990) 183 ITR 93 (St) Consequently, the Assessing Officer can not make any disallowance under section 11. (AY. 2014-15)
ITO (E) v. The Theosophical Society (2024)114 ITR 282 (Chennai)(Trib)

171 **S. 10(23C): Educational institution-Two separate educational institutions-Gross receipts of each of educational institutions had to be separately considered for purpose of allowing claim of exemption. [S. 10(23C))(iiiad)]**
Assessee is a society and engaged in running, operating and management of educational institutions at Bhopal. Assessee filed its return of income and claimed exemption under section 10(23C)(iiiad). Assessing Officer denied the exemption under section 10(23C)(iiiad) on ground that gross receipt of assessee exceeds Rs. 1 crore as prescribed monetary limit under section 10(23C)(iiiad). Commissioner (Appeals) up held the order. On appeal the Tribunal held that since assessee is running two separate educational institutions, gross receipts of each of educational institutions had to be separately considered for purpose of allowing claim of exemption under section 10(23C)(iiiad). Order is set aside and the issue is remanded to Assessing Officer for fresh adjudication. (AY. 2019-20)
Aarti Mahila Kalyan Samiti v. ACIT, CPC (2024) 209 ITD 154 (Indore) (Trib.)

172 **S. 10(23C): Non profit organization-Promoting export of leather items-Objectives of general public utility-Net surplus was less than 20 per cent of total receipts-Exemption cannot be rejected under second proviso to section 2(15). [S. 2(15), 10(23C)(iv)]**
Assessee is a non-profit organization, which is engaged in promoting export of leather items. It is facilitating participation of its members in trade fairs and had claimed exemption under section 10(23C)(iv). Assessing Officer denied the exemption. CIT(A) affirmed the order of the AO. On appeal the Tribunal held that Apex Court in case of *Asstt. CIT (E) v. Ahmedabad Urban Development Authority (2022) 449 ITR 1 /(2023) 291 Taxman 11(SC)* held that while actually carrying out objectives of general public utility (GPU), if some profit is generated, it can be granted exemption provided quantitative limit of not exceeding 20 per cent under second proviso to section 2(15) for receipts from such profits, is adhered to. On facts since net surplus of Rs. 7. 62 crores was less than 20 per cent of total receipts of assessee exemption under section 10(23C)(iv) could not be rejected under second proviso to section 2(15). (AY. 2016-17)
Council for Leather Exports v. DCIT (2024) 208 ITD 416/231 TTJ 873/242 DTR 272 (Chennai) (Trib.)

173 **S. 10(23C): Educational institution-Denied exemption under section 11 due to lack of registration under section 12A/12AA-Matter is remanded to Commissioner (Appeals) for fresh adjudication. [S. 10(23C)(iiiad), 11, 12A, 12AA]**
Assessee-trust was denied exemption under section 11 due to lack of registration under section 12A/12AA. Alternatively, it claimed deduction of expenses under section 10(23C)(iiiad) citing low turnover and educational engagement. Commissioner (Appeals) disallowed expenses due to lack of evidence. On appeal the Assessee sought another chance to provide relevant documents for genuine engagement in educational activities. It stated that expenses included salaries for staff engaged in educational activities,

as well as seminar, uniform, communication, vehicle, and postage expenses related to running educational institutions and assured that evidence would be provided to substantiate genuineness of those expenses for educational purposes. Since department had no objection to fresh adjudication, in such circumstances, appellate order was to be set aside, and matter was to be restored to Commissioner (Appeals) for a fresh decision with a direction to assessee to cooperate and provide necessary documents. Matter remanded. (AY. 2019-20)
Vidya Sagar Education Trust v. ITO (2024) 205 ITD 400 (Ahd) (Trib.)

S. 10(23C): Educational institution-Unregistered charitable and religious institutions-Non granting of registration-Income is required to be computed by applying normal provisions of Act as AOP-Net income only is required to be taxed-Matter remanded. [S. 28(i)] 174

Assessee-trust claimed exemption of administrative expenditure under section 10(23C). Assessing Officer held that assessee had not filed audit report, denied exemption. Assessee submitted before Commissioner (Appeals) that it was not registered under section 10(23C) and it had wrongly mentioned in return that it was registered under section 10(23C) and its real income after reducing expenditure or application of income be taxed. Commissioner (Appeals) without adjudicating submissions of assessee dismissed appeal. On appeal the Tribunal held that once assessee had no registration under section 10(23C) then its income was required to be computed by applying normal provisions of Act and net income only was required to be taxed as AOP. Since Commissioner (Appeals) had not adjudicated submissions of assessee, issue was to be remanded back to him to decide afresh by applying normal provisions of Act. (AY. 2019-20, 2020-21)
Sri Ramalingeswara Swamy Temple v. ADIT(E) (2024) 205 ITD 206 /109 ITR 79 (SN) (Hyd)(Trib)

S. 10(23C): Educational institution-No disallowance can be made by applying provisions of section 11 and 12-Grant in aid-Could not be considered as assessee's income-Exempt from tax-Depreciation- cost incurred on acquisition of fixed assets as application of income-Depreciation is allowable. [S. 10(23C)(vi), 11, 12, 32] 175

Held that where assessee-educational institution was approved under section 10(23C) (vi), no disallowance could have been made by applying provisions of sections 11 and 12. Grant in aid funds could be spent for specified purposes only on specific approval of State Government, same were grant-in-aid which could not be considered as assessee's income and thus, same would be exempt from tax. When assessee-educational institution had not claimed cost incurred on acquisition of fixed assets as application of income, order disallowing depreciation as application of income is deleted. (AY. 2015-16)
Baba Hira Singh Bhattal Institute of Engineering & Technology v. DCIT (2024) 204 ITD 698 /115 ITR 202/ 228 TTJ 273 (Chd) (Trib.)

176 **S. 10 (23C) : Educational institution-Assessee has 12 units-Annual receipts of each of the institutions of the Assessee was less than the prescribed limit under the provision-Entitled to the exemption-Directed to give effect to petition filed under S. 154 of the Act. [S. 10(23C)(iiiad), Form No 10BB]**

The Assessee trust was running 12 educational institutions and claimed exemption u/s 10(223C)(iiiad) in its return which was denied on ground that Form 10BB was not filed by the Assessee. The ITAT observed that the Assessee had filed all the documents along with the return, which showed that the gross receipts of the Assessee was Rs. 2. 50 crores. Before ITAT, the Assessee submitted that it was covered by the judgment of the jurisdictional High Court in case of CIT v. Children's Education Society [2013] 358 ITR 373 (Kar.) in which it was held that "the exemption in terms of the provisions of s. 10(23C)(iiiad) was available to the Assessee as annual receipts of each of the institutions of the Assessee was less than the prescribed limit under the provision.". It was held that the issue is no longer debatable and the AO was directed to give effect to s. 154 application filed by the Assessee. (AY. 2016-17)

D. Banumaiah's Educational Institutions v. ITO (E) [2024] 109 ITR 94 (SN) / 205 ITD 446 (Bang) (Trib.)

177 **S. 10 (23C): Educational institution-Approval by prescribed authority-Object is not found existed solely for advancing educational purposes-Denial of exemption is justified. [S. 10(23C)(vi), Art. 226]**

Authority has rejected the contention and claim of the assessee-trust on the ground that as per the aims and objects of the trust, it is apparent that it has not only been formed for the purpose of advancing education, but is also for other purposes as mentioned in cl. 5(i), (j), (k), (l), (m), (n) and (o) of the trust deed. On writ, the Court held that exemption was claimed by the trust itself and not by an individual educational institute namely, GHG academy, therefore it cannot be conclusively said that the trust was found and existed solely for advancing education purposes, hence, it was rightly not granted exemption. (AY. 2012-13)

Shri Guru Hargobind Sahib Charitable Trust v. CBDT (2024) 340 CTR 219 / 240 DTR 441 (P&H)(HC)

178 **S. 10(23D):Mutual Fund-Exemption-Approved by Government and Reserve Bank of India-Eligible for exemption-Order of CIT(A) is affirmed. [UTI India Fund Unit Scheme, 1986, Unit Trust of India Act, 1963]**

Held that the assessee is registered Mutual Fund approved by Government and Reserve Bank of India, the observation of the AO that in order to grant exemption under s. 10(23D) has to have a separate registration is uncalled for and the various documents submitted by the assessee proves that the offshore fund scheme maintained by the assessee is an approved unit by the SEBI. Order of CIT(A) allowing the exemption is affirmed. (AY. 2014-15, 2016-17 to 2018-19)

DCIT (E) v. UTI India Fund Unit Scheme 1986 (2024) 228 TTJ 607 / 237 DTR 44 (Mum) (Trib)

S. 10 (23FB): Venture Capital Fund-Exemption-Income from Investment in Venture Capital Undertaking-Shares of entity not listed on a recognized stock exchange which carried on business activity in India-Not covered in the negative list-Dividend income is exempt. [S. 2(31), 10(35), Securities and Exchange Board of India (Venture Capital Fund) Regulation, 1996, regln. 2(n)] 179

Since no income from the two entities was shown, the issue of s. 10(23FB) was academic. The financials of S showed that it qualified as a venture capital undertaking under the Regulations and therefore, it qualified as a venture capital undertaking for section 10(23FB). Similarly, in so far as investments made in O shares which were not listed on a recognised stock exchange which also carried on business activity in India, nowhere had it been pointed out that these activities were covered in the negative list under Schedule III to the Regulations. Held that investment in this company also qualified as a venture capital undertaking under the Regulations. Dividend income is exempt. (AY. 2018-19)

CIT (Dy.) v. Aditya Birla Real Estate Fund (2024) 111 ITR 40 SN) (Mum)(Trib.)

S. 10 (25) : Approved superannuation fund-Exemption-Only Chief Commissioner has power to withdraw approval-Approval not withdrawn-Denial of approval on ground that conditions for approval had not been complied with-Order of denial is not valid. [S. 10(25)(iii)] 180

The Assessing Officer passed an order denying exemption. On appeal CIT(A) directed the Assessing Officer to allow the exemption. On appeal the Tribunal, affirmed the order of the Assessing Officer. On appeal the Court held that the approval of the assessee-fund granted by the competent authority, i.e., the Commissioner by order dated September 29, 1995 continued for the assessment year in question, i.e., the assessment year 2005-06 and it had neither been withdrawn nor cancelled. Exemption had been denied on the ground that the assessee-fund did not comply with the conditions of approval and therefore the fund lost its recognition. The denial of exemption was not valid. Order of the Tribunal is set aside. (AY. 2005-06)

Assam Frontier Employees Pension Fund v. CIT (2024) 464 ITR 102/ 336 CTR 319/164 taxmann.com 116 (Cal)(HC)

S. 10(26): Schedule Tribes-Partnership firm-Person-Hotel business-A partnership firm being a separate assessable 'person' under Income-tax Act, would not be entitled to same exemption under section 10(26) as any or all of individual partners would be in their individual capacity. [S. 2(23), 2(31)(iv), Art. 366(25)] 181

Assessee-firm is running a hotel business. It consisted of two partners who were related to each other (brothers) and belonged to Khasi tribe which was enlisted as Scheduled Tribe in State of Meghalaya and was covered under article 366(25) of Constitution of India. They were residents of Khasi Hills Autonomous District and thus were entitled to exemption under section 10(26) in their individual capacity. Assessee firm claimed exemption under section 10(26) on plea that since a partnership firm in itself was not a separate juridical person and it was only a collective or compendious name for all of its partners having no independent existence without them, and since partners of assessee-firm were entitled to exemption under section 10(26), therefore, same exemption

under section 10(26) is available to firm. AO rejected the claim. CIT(A) up held the order of the AO. On appeal the Tribunal held that a partnership firm being a separate assessable person under Income-tax Act, would not be entitled to same exemption under section 10(26) as any or all of individual partners would be in their individual capacity. Advantages and disadvantages conferred under Income-tax Act on separate class of persons were neither transferable nor inter changeable and, thus, scope of beneficial provisions could not be extended to a different person under Income-tax Act as it might defeat mechanism and process provided for assessment of different class/ category of persons. Ratio decidendi in judgment of Gauhati High Court in *CIT v. Mahari & Sons (1993) 67 Taxman 449 (Gauhati)(HC)* in context of a Khasi family would not be applicable in case of a partnership firm, though consisting solely of partners, who in their individual capacity are entitled to exemption under section 10(26). (AY. 2013-14 to 2015-16)

Hotel Centre Point v. ITO (2024) 111 ITR 502 / 206 ITD 565 /228 TTJ 905 / 236 DTR 97 (Gauhati) (SB) (Trib.)

Ri-Kynjai Serenity v. ITO (2024) 111 ITR 502 / 206 ITD 565/228 TTJ 905/ 236 DTR 97 (Gauhati) (SB) (Trib.)

182 **S. 10(38) : Long term capital gains from equities-STT was not paid at time of acquisition of shares-Entitled to exemption. [S. 115U]**

Assessee is a trust registered as Venture Capital Fund. Assessee claimed exemption of long-term capital gains (LTCG) under section 10(38) in respect of sale of unlisted shares of a company. Assessing Officer held that assessee was not eligible for exemption as it had not paid Securities Transaction Tax (STT) at time of acquisition of shares. CIT(A) allowed the exemption. On appeal the Tribunal held that condition prescribed in clause (a) and (b) of section 10(38) were fulfilled and assessee would be covered by exemption provided in clause (b)(i) of Notification No. SO 1789(E) dated 5-6-2017. Therefore, even if assessee did not pay STT at time of acquisition of shares, still it was eligible for exemption under section 10(38). (AY. 2018-19)

DCIT v. Business Excellence Trust (2024) 208 ITD 173 (Mum) (Trib.)

183 **S. 10(46):Body or Authority-Specified income-Commercial Activity-Granting loan-Agent of State Government to support development activities-Entitled to exemption-The order rejecting exemption under section 10(46) was quashed-The Revenue was directed to process the application for exemption made by the assessee. [S. 2(15), 10(20A), 119, Art. 226]**

The assessee is an entity constituted under the Uttar Pradesh Industrial Area Development Act, 1976. The Central Board of Direct Taxes rejected its application to grant exemption under section 10(46) on the ground that the assessee extended loans to various entities and such activities undertaken were otherwise than for the benefit of the general public. On a writ petition the Court held that that the assessee had been constituted under the 1976 Act with the objective of undertaking developmental activities in an industrial development area. It acted as an arm and an adjunct of the State charged with undertaking planned development in the industrial development area. In that connection, the assessee undertook planning and development of the area,

acquired land and property, engaged in construction of housing units or industrial units. In order to fulfil these objectives, it was provided funds by the State Government and additionally created a corpus from the revenue and receipts generated and received in the course of its operations. The assessee primarily was an agent of the Government obligated to undertake planned development of areas placed under its control. It could not be viewed as being a corporation intended to have been incorporated for a profit or commercial motive. The provisions of the 1976 Act and the material on record clearly dispelled any notion of the assessee being a "hardcore trading corporation". Statutory bodies like the assessee, were intended to act as an "architectural agent" of development and growth. The Revenue had erred in holding that the loans and advances extended by the assessee would fall within the ambit of commercial activity. The grant of those loans had also not been established to have been motivated with a view to profit. Some of those loans were extended to finance activities supportive and supplemental to the development activity that was liable to be undertaken by the assessee. The finding in the order that the assessee had advanced loans to private entities was factually incorrect. The assessee did not claim exemption of interest income earned from bonds and shares for the purposes of section 10(46) and the interest income had been ploughed back for the purposes of carrying out the statutory functions and duties cast upon the assessee. Although the assessee was called upon to provide all financial details, the Revenue did not specifically place on notice to answer or tender any explanation with respect to the amount of interest income that was earned from bonds, shares and fixed deposits. The order rejecting exemption under section 10(46) was quashed. The Revenue was directed to process the application for exemption made by the assessee. Relied on *Greater Noida Industrial Development Authority v. UOI (2018) 406 ITR 418 (Delhi)(HC).*
New Okhla Industrial Development Authority v. UOI (2024) 468 ITR 195 (Delhi)(HC)

S. 10A : Free trade zone-Rental income-Sub lease of two units-Eligible for inclusion in profit as they were intimately connected with business of undertakings-SLP of Revenue is dismissed. [Art. 136] 184

Assessee had taken on lease certain area in STPI (Software Technology Park of India). As assessee could not use entire area for its operation, it sub-leased portion of premises to two units and was receiving rent for same. It claimed deduction under section 10A. Assessing Officer disallowed deduction in respect of rental income received from said two units on ground that lease amounts could not be considered as income derived from export of any software. Commissioner (Appeals) held that rental income received by assessee was eligible for inclusion in profit as they were intimately connected with business of undertakings. Tribunal affirmed the order of the CIT(A). On appeal High Court held that since conditions such as location of unit in STPI having been complied with, benefit of section 10A would be available to assessee. Special leave petition filed against the order of High Court is dismissed. (AY. 2005-06)
PCIT v. Infosys Ltd. (2024) 300 Taxman 592 (SC)
Editorial : PCIT v. Infosys Ltd(2023) 147 taxmann.com 520 (Karn)(HC)

185 **S. 10A : Free trade zone-Profits and gains derived from export oriented undertaking-Interest income-Short term fixed deposits-Matter remanded to the file of the Assessing Officer. [S. 28((i), 56, Art. 136]**

Court held that in view of the fact that the Tribunal has remanded the same matter in the case of the assessee to the AO in the subsequent assessment year for giving a finding bearing in mind the facts of the assessee and its business the matter pertaining to the relevant assessment year is also remanded to the AO for consideration of the issue by bearing in mind the nature of business of the assessee and the purpose for which the short-term fix deposit accounts were opened by the assessee in the bank and the nature of income and the treatment of interest income as income from other sources or business income. (AY. 2009-10)

Xl India Business Services (P) Ltd. v. ITO (2024) 340 CTR 939 / 242 DTR 265 / 167 Taxmann.com 583 (SC)

Editorial : Xl India Business Services (P) Ltd. v. ITO (2018) 94 taxmann.com 720 (Delhi)(HC) is set aside.

186 **S. 10A : Free trade zone-Export turnover-Total sales-Deemed exports-Export turnover should constitute at least 75 per cent of the total turnover, although in quantitative terms, the export quantity might be less than 75 per cent of the total sale quantity. [S. 10A(2)(ia), Export-Import Policy 1992-97]**

Held that the amendment by introducing sub-s. (ia) to cl. (2) of s. 10A stipulates that the exports should not be less than 75 per cent of 'the total sales'. The provisions of the Export Import Policy, 1992-97 provide that 'the entire production of EOU/EPZ units shall be exported except 25 per cent of the production in value terms may be sold in the Domestic Tariff Area when the use of indigenous inputs is more than 30 per cent in value terms'. On the basis of the aforesaid provision, it appears that the section imposes a value based restriction and not a quantitative restriction. What is required to be satisfied as per sub-s. (ia) to cl. (2) of s. 10A is that the export turnover should constitute at least 75 per cent of the total turnover, although in quantitative terms, the export quantity might be less than 75 per cent of the total sale quantity. (AY. 2000-01)

IBM Global Services India (P) Ltd. v. Dy. CIT (2024) 231 TTJ 1 / 240 DTR 321 (Bang)(Trib)

187 **S. 10A : Free trade zone-Foreign currency expenditure from export turnover-Refund-Interest on refund-Disallowance of expenditure-Exempt income-Interest -Matter remanded. [S. 14A, 234D]**

Held that none of the authorities had considered the facts and dealt with the issue in proper perspective with regard to the assessee's claim that deduction under section 10A was erroneously made due to the exclusion of foreign currency expenditure from the export turnover. As the issue needed verification, it was restored to the Assessing Officer for a decision in terms of the principle laid down by the Tribunal in the assessee's own case for an earlier assessment year. That the Assessing Officer was directed to verify whether refund had been issued to the assessee and, if so, the interest charged thereon under section 234D. Disallowance under section 14A is remanded. (AY. 2009-10)

Virtusa Consulting Services P. Ltd. v. Dy. CIT (2024) 114 ITR 386 (Chennai)(Trib)

S. 10A : Free trade zone-Computation-Total turnover-Expenses excluded from export turnover to be excluded from total turnover. 188

Held that the expenses excluded from the export turnover had to be excluded from the total turnover as well while computing the deduction under section 10A of the Income-tax Act, 1961. The Assessing Officer had not followed the directions of the Dispute Resolution Panel in granting the benefit to the assessee that the foreign currency expenses which are excluded from export turnover and not excluded from total turnover. The Assessing Officer was to exclude the expenses from the total turnover also while determining the exemption under section 10A of the Act. (AY. 2008-09 to 2012-13)

Crisil Ltd. v. Add. CIT (2024)112 ITR 56 (Mum)(Trib)

S. 10A : Free trade zone-Eligible profits-Interest income-Income from business eligible for deduction-Foreign exchange gain on exchange earners' foreign currency account-Allowable. 189

Held that the interest income is income from business eligible for deduction under section 10A of the Act. That deduction under section 10A in respect of foreign exchange gain on Exchange Earners' Foreign Currency Account is allowable. (AY. 2010-11)

Tech Mahindra Business Services Ltd. v. ACIT (2024)112 ITR 21 (SN)(Mum)(Trib)

S. 10A : Free trade zone-Reconciled entire figure and entire reconciliation matched amount declared in Form 56F-Claim is directed to be allowed. [Form No 56F] 190

Held, allowing the appeal, that the assessee had correlated and reconciled the entire figure and it seemed that the entire reconciliation matched the amount declared in form 56F. Claim is allowed. (AY. 2011-12)

Toppan Merrill Technology Services P. Ltd. v. Dy. CIT (2024)112 ITR 32 (SN)(Chennai)(Trib)

S. 10AA : Special Economic Zones-Constitutional validity-Explanation after sub-section (1) of section 10AA, inserted by amendment with prospective effect from 1-4-2018, applicable in respect of assessment year 2018-19 and subsequent years-Constitutionally valid. [Art. 14, 19(1)(g), 226, 265] 191

The assessee is incorporated on 7-9-2007, which established its unit on May, 2012, at Kandla Special Economic Zone, Gujarat, for manufacture of specialized refractories and commenced operations from May, 2012. It became eligible for claiming exemption under section 10AA, from the assessment year 2013-14 onwards. On 1-4-2018, an Explanation was inserted after section 10AA(1) by the Finance Act, 2017, with effect from the aforesaid date prospectively. On writ, the assessee contested the Explanation to section 10AA(1) inserted by the Finance Act, 2017 with prospective effect, as unconstitutional and allegedly violative of articles 14, 19(1)(g), and 265 of the Constitution of India. Court held that explanation after sub-section (1) of section 10AA, inserted by amendment with prospective effect from 1-4-2018, applicable in respect of the assessment year 2018-19 and subsequent years is constitutional and is a valid piece of legislation and is not arbitrary, discriminatory and is not violative of articles 14, 19 & 265 of the Constitution of India. Circulars & Notifications : Circular No. 3 of 2008, dated 12-3-2008.

IFGL Refractories Ltd. v. UOI (2024) 296 Taxman 553/463 ITR 649 / 338 CTR 73 (Cal.)(HC)

192 **S. 10AA : Special Economic Zones-Qualifying profits-Computation-Gross total income-Deduction to be allowed from the total income and shall not exceed such total income. [S. 80AB]**

Held, that section 80AB of the Act states that the amount of income computed in accordance with the provisions of the Act and included in the gross total income is eligible for deduction. Hence, section 80AB is concerned with the quantum of income that is eligible for deduction under the heading "C. Deduction in respect of certain income" in Chapter VI-A. The Explanation inserted in section 10AA of the Act states that the deduction to be allowed under section 10AA of the Act shall be allowed from "the total income" and shall not exceed such total income. Hence, the Explanation specifies "the stage" at which the deduction under section 10AA of the Act should be allowed (i. e., from the total income) and also states that quantum of deduction should be restricted to the amount of total income. Accordingly, section 80AB and the Explanation inserted in section 10AA operate in different fields. The decision of the Commissioner (Appeals) did not require any interference. (AY. 2017-18, 2018-19)

Dy. CIT v. Reliance Industries Ltd. (2024)109 ITR 180 (Mum)(Trib)

193 **S. 10(10AA): leave salary-Employee of the central government or state government-Leave encashment-Directed to allow the exemption. [S. 154]**

Assessee has joined as a technician in the central government department of telecom in the year 1981. The Government of India has corporatized the department of telecom into BSNL with effect from 1-10-2000. The assessee has credited 280 days of leave at the time of retirement for the service rendered department of telecom till the date of corporatization and claimed exemption of 280 days salary. The CPC calculated the exemption u/s 10(10AA) basing on the present declaration that the assessee was an employee of BSNL and hence the exemption u/s 10(10AA) was restricted to Rs. 3 lakhs. Rectification application was rejected. On appeal the Tribunal held that The CIT as well as the AO has not taken cognizance of these facts and wrongly denied the benefit of exemption of leave encashment u/s 10(10AA) of the Act. The appeal of the assessee is allowed. (AY. 2019-20)

Vijay pemmaraju v. ITO [2024] 204 ITD 663 (SMC) (Vishakha) Trib)

194 **S. 10B: Export oriented undertakings-Non-realisation of export proceeds within six months-CIT(A) has rightly issued directions to allow the assessee's claim in the year of return after due verification of the facts of return of goods-Provisions for doubtful debts and advances-Not to be added to book profit. [S. 115JB]**

Assessee is not entitled to exemption under s. 10B in respect of the amount of export turnover which was not received within six months from the end of the relevant financial year; since the goods were returned back in the succeeding year, CIT(A) has rightly issued directions to allow the assessee's claim in the year of return after due verification of the facts of return of goods. Tribunal also held that provisions for doubtful debts and advances is not to be added to book profit. (AY. 2009-10, 2011-12)

Sun Pharmaceutical Industries Ltd. v. Dy. CIT (2024) 231 TTJ 164 / 38 NYPTTJ 520 (Ahd) (Trib)

S. 10B: Export oriented undertakings-Manufacture or processing-Preparation and export of pickles-Change in characteristic of raw materials from vegetables to bottled pickle, with different use-New product Entitled to benefit-Entire sale proceeds must be received in convertible foreign exchange within stipulated time-Bank realisation certificates, certified statement of forex receipts and certificate of auditor establishing realisation of export proceeds-Eligible for deduction to extent of foreign exchange received during specified period-Entitled to deduction. [S. 80IC] 195

Held that in the manufacture of pickles, there was a change in the characteristic of the raw materials from that of vegetables to a pickle, whose use was also different. Moreover, section 80-IC(2) talked of manufacture or production and Schedule XIV to the Income-tax Act, 1961, gave the list of articles or things or operations under item I recognising fruit and vegetable processing industry manufacturing or producing canned or bottled products. Obviously, the assessee was a vegetable processing industry and, in terms of the Schedule, was manufacturing or producing the bottled product of pickles. There was no reason to hold that the assessee was not engaged in manufacturing activities. The process of manufacturing pickles from raw vegetables, fruits, masala and other ingredients brought about a new and different marketable commodity than the raw material. Entitled to deduction. Held that the assessee had produced bank realisation certificates, bank certified statement of forex receipts and certificate of the auditor to show the realisation of export proceeds. There was no infirmity in the order of the Commissioner (Appeals) in allowing the assessee's claim under section 10B to the extent of foreign exchange received during the specified period. Both of the assessee's units had become 100 per cent. export-oriented units. The Commissioner (Appeals) gave a categorical finding about acquisition of the machinery in different years after obtaining the remand report. There was no reason to sustain the disallowance made by the Assessing Officer. (AY. 2001-02 to 2008-09)

ITO v. M. M. Poonjiaji Spices Ltd. (2024)113 ITR 294/230 TTJ 312 (Mum)(Trib)

S. 11 : Property held for charitable purposes-Denial of exemption When the registration is granted by the CIT(E), further probe by Assessing Officer into objects of Trust based on such objects is not permissible-Activities of to identify, enrol, allot work, regulate operation of private workers from time of inception-Activities for advancement of general public utility-Surplus earned retained for carrying out activity-Cannot be treated as business activity-Exemption cannot be denied-Advances to Trustees-Interest recognised on accrual basis-Loans covered by adequate security and interest-Cannot be treated as investments in violation of S. 11(5), 11(3) of the Act-No violation of Section 13(1)(c). 13(2) of the Act. Accumulation of funds-Form 10 filed for Assessment Year 1999-2000 showing purpose of accumulation-Purpose of accumulation is not general in nature-Activities carried on in accordance with approved charitable objects for which assessee was formed and registered-No violation of Section 11(2)-Delay of 496 days in filing the SLP-SLP of Revenue is dismissed. [S. 11(2), 11(4A), 11(5), 12A, 13(1)(c), 13(2), Art. 136] 196

Dismissing the appeal of the Revenue the Court held that when the registration is granted by the CIT(E), further probe by Assessing Officer into objects of Trust based on such objects is not permissible. Activities of identify, enrol, allot work, regulate operation of private workers from time of inception, activities for advancement of

general public utility. Surplus earned retained for carrying out activity cannot be treated as business activity Exemption cannot be denied. Amount advanced to Trustees, interest recognised on accrual basis, loans covered by adequate security and interest. Advance of loan cannot be treated as investments in violation of S. 11(5), 11(3) of the Act. T here is no violation of Section 13(1)(c). 13(2) of the Act. As regards the accumulation of funds, form 10 filed for Assessment Year 1999-2000 showing purpose of accumulation. Purpose of accumulation is not general in nature. Activities carried on in accordance with approved charitable objects for which assessee was formed and registered there is no violation of Section 11(2). SLP of Revenue is dismissed as there was gross delay of 496 days in filing the SLP. (AY. 2003-04)

Asst. CIT v. Cargo Handling Private Workers Pool (2024)467 ITR 32/ 300 Taxman 450 (SC)

Editorial : CIT v. Cargo Handling Private Workers Pool (2024)467 ITR 32 (AP)(HC)

197 **S. 11 : Property held for charitable purposes-Information to charity commissioner-Remuneration to trustees-Denial of exemption is not justified-SLP of Revenue is dismissed. [S. 13(1)(c), 260A]**

Dismissing the appeal of the Revenue the High Court held that the Tribunal had followed its own decision in which it had granted exemption under section 11 to the assessee for the assessment years 2008-09 and 2009-10. Since there was nothing on record that such orders had been set aside or overruled in any manner by the court, the Tribunal had found no reason to interfere with the order of the Commissioner (Appeals). There was no infirmity in the order of the Tribunal granting exemption under section 11 to the assessee for the assessment year 2010-11. SLP of Revenue is dismissed. (AY. 2010-11)

CIT (E) v. Lata Mangeshkar Medical Foundation (2024) 464 ITR 706/300 Taxman 178 (SC)

Editorial : CIT (E) v. Lata Mangeshkar Medical Foundation (2024) 464 ITR 702/162 taxmann.com 118 (Bom)(HC)

198 **S. 11 : Property held for charitable purposes-Construction activities under State PWD department-2. 5 per cent supervision charges-Matter is remanded to Assessing Officer for determination of commercial activity and considering the benefit of section 12A. [S. 2(15), 12A]**

Assessee-society was registered under section 12A with main objective to take up construction work of any nature to establish a chain of retail outlets. It undertook construction activities under State PWD department in lieu of 2.5 per cent supervision charges and accordingly claimed certain amount as applied for charitable purposes. Assessing Officer held that construction work was an activity of trade, commerce or business for consideration and assessee could not claim status under section 12A since activities carried on by it did not fall within the meaning of charitable purpose warranting exemption from income tax. Order was affirmed by Tribunal. On appeal High Court held that where assessee executed construction work for benefit of Government and received certain amount from Government for same, purpose of such construction work could not be accepted as an activity coming within meaning of advancement of other object of general public utility. It further held that since assessee was involved in carrying on of any activity in nature of trade, commerce or business, proviso to section 2(15) would be attracted and assessee would not be entitled to benefit under section 11 of the Act. On appeal considering the judgement of Apex Court in *ACIT*

(E) v. Ahmedabad Urban Development Authority [2022] 143 taxmann.com 278/[2023] 291 Taxman 11/[2022] 449 ITR 1 (SC) matter is remanded to Assessing Authority for determination of commercial activity and for considering benefit of section 12A and for passing appropriate orders. (AY. 2009-10, 2013-14)
Nirmithi Kendra v. Dy. CIT (E) (2024) 297 Taxman 382/ 336 CTR 743 (SC)
Editorial : Nirmithi Kendra v. Dy. CIT (E) (2022) 141 taxmann.com 495 (Ker)(HC), set aside.

S. 11 : Property held for charitable purposes-The advancement of objects of general public utility-Entitled to exemption. [S. 2(15), 12, 260A] 199
Held that the advancement of objects of general public utility, assessee is Entitled to exemption. Followed *CIT (E) v. Ahmedabad Urban Development Authority [2022] 449 ITR 1 (SC).*
CIT (E) v. Ahmedabad Urban Development Authority (2024)470 ITR 164 (Guj) (HC)

S. 11 : Property held for charitable purposes-Donations to other charitable institutions-Out of accumulated income-Direction as part of corpus donations-Not hit by Explanation 2 to section 11(1) of the Act. [S. 11(1), 11(2), 11(3), 11(3)(d), 260A] 200
The assessee-trust had accumulated income under section 11(2) and extended donations to other charitable trusts. The Assessing Officer held that extending donations to other charitable trusts would amount to utilization of the funds for a purpose other than those for which the surplus was accumulated under section 11(2) and thus being violative of section 11(3)(c) and section 11(3)(d). On appeal, the Commissioner (Appeals) held in favour of the assessee. On further appeal, the Tribunal affirmed the view taken by the Commissioner (Appeals). On appeal High Court affirmed the order of the Tribunal. (AY. 2009-10)
CIT (E) v. Jamnalal Bajaj Foundation (2024) 300 Taxman 36 /468 ITR 723 (Delhi)(HC)

S. 11 : Property held for charitable purposes-Corpus fund-Corpus Donations-Securing admission-Tribunal is not justified in holding ineligible for exemption on corpus Fund. [S. 11(1)(a), S. 11 : Property held for charitable purposes. [S. 11(1)(d), 260A] 201
Allowing the appeal the Court held that the amounts paid by the parents of the students admitted to the educational institution of the assessee-trust were payments towards corpus donation and were not collected by way of capitation fees. The Assessing Officer had not conducted any inquiry with regard to examination of parents who had admitted the students in school as to whether the payment was made towards corpus fund or capitation fee. Though it was true that the donation was bound to have been given for material gain in securing admission, it could not be characterised as donation towards charitable purpose and the assessee would not be entitled to have the benefit, but in the absence of any material on record, such view could not be taken. Therefore, the Tribunal had committed an error by treating the admission fees charged from the students as not forming part of the corpus fund of the trust. Therefore, the Tribunal was not justified in confirming the addition of the corpus fund to the income of the assessee by holding that the receipts could not be treated as corpus donation and not eligible for exemption under section 11(1)(d). (AY. 2013-14)
N. H. Kapadia Education Trust v. Asst. CIT (E) (2024)467 ITR 278 (Guj)(HC)

202 **S. 11 : Property held for charitable purposes-Specific purposes and objects without profit motive-Investment in Joint venture and utilisation of land allotted by Government for commercial purposes and earning profits in form of rental Income and sharing of profits-Deviation and contravention of objects, purposes and mission-Not entitled to exemption-Denial of exemption cannot be restricted only to extent of sum of investment in joint venture-Assessee is not entitled to exemption. [S. 11(5), 12, 12A,13(1)(d), 80G, 260A]**

The assessee is a society registered under section 12A of the Act, and was approved under section 80G of the Act. It was established with a specific purpose, object and mission to promote the quality of construction and bring in international standards, and undertook activities for the promotion of education, training, research and imparting professionalism and skill formation at all levels of construction. For this a joint venture company H was constituted for holding exhibitions and also to promote the object and mission of the assessee. For the assessment year 2002-03 the Assessing Officer held that the investment of the assessee in the joint venture was in violation of section 11(5) and rejected the claim for exemption under section 11. The Commissioner (Appeals) and the Tribunal affirmed his order. On appeal dismissing the appeals, (i) that the assessee-society had acted contrary to its purpose, objects and mission and could not claim exemption under section 11. There were concurrent findings by the Commissioner (Appeals) and the Tribunal based on facts available on record that the assessee had earned profits in contravention of its mission and objects. In addition to the establishment of a joint venture, the assessee had also parted with hundred acres of land allotted by the Government to the joint venture which had utilised the land for purpose of holding exhibitions of all natures and in the process, had earned income in the form of rent. The joint venture had also used the land for commercial purposes by allotting the land to other commercial establishments. These aspects had been duly considered by the Assessing Officer and the appellate authorities who had rejected the exemption under section 11. The deviation and contravention disentitled the society from claiming the benefit of exemption under section 11. That the contention of the assessee that the Tribunal could have restricted the denial of exemption under section 11 to the extent of investment made in the joint venture could not be accepted for the reason that the amount of investment already carried out by the assessee in the joint venture, coupled with the fact that the assessee had parted with hundred acres of land to be used by the joint venture company for gaining rental and other income and the rental income earned by the joint venture having been shared with the assessee to some extent, in contravention of the object, purpose and mission for which the assessee was established. That the Government instructions or Government orders on the basis of which the assessee had received funds were no longer in existence but were struck down by the court. In view of passing of G. O. Ms. No. 92, dated May 19, 1998, by the State Government, the corpus amount generated by the assessee was not voluntary contribution and therefore, the amount invested by the assessee in the joint venture company could not be treated as group corpus fund. The amount of investment in shares of the joint venture company and the transfer of hundred acres of land by the assessee to the joint venture company were covered under section 13(1)(d). Therefore, the assessee-society rendered itself disentitled to the benefit under section 11 in view

of violation of section 11(5) Finance Act, 1983 ([1983] 142 ITR (St.) 13), (AY. 2002-03)
National Academy of Construction v. ADIT(E) [2023] 156 taxmann.com 532/ (2024)465 ITR 69 / 340 CTR 729 (Telangana) (HC)

S. 11 : Property held for charitable purposes-Information to charity commissioner-Remuneration to trustees-Denial of exemption is not justified. [S. 13(1)(c), 260A] 203
Dismissing the appeal of the Revenue the Court held that the Tribunal had followed its own decision in which it had granted exemption under section 11 to the assessee for the assessment years 2008-09 and 2009-10. Since there was nothing on record that such orders had been set aside or overruled in any manner by the court, the Tribunal had found no reason to interfere with the order of the Commissioner (Appeals). There was no infirmity in the order of the Tribunal granting exemption under section 11 to the assessee for the assessment year 2010-11. (AY. 2010-11)
CIT (E) v. Lata Mangeshkar Medical Foundation (2024) 464 ITR 702 (Bom)(HC)
Editorial : SLP of Revenue is dismissed, CIT (E) v. Lata Mangeshkar Medical Foundation (2024) 464 ITR 706 (SC)

S. 11 : Property held for charitable purposes-Capital gains-Memorandum of Understanding (MOU)-Symbolic possession-Permission from the Charity Commissioner-Capital asset is held to be wholly for the purpose of charitable purpose-Legal possession-Sale proceeds were invested with nationalised bank-Entitled to claim exemption-Order of Tribunal is affirmed-No substantial question of law. [S. 11(IA), 260A] 204
Assessee, a public charitable trust, entered into an agreement in 1994 with a builder, Buildforce to sell a property and as per MOU, symbolic possession was given to Buildforce. Certain dispute arose between Buildforce and assessee and a suit came to be filed which was settled and under which assessee agreed to accept a certain sum in full and final settlement and transfer property in favour of nominee of Buildforce and sale proceeds were invested with nationalised bank and assessee claimed that no capital gain was to be assessed in hands of assessee in view of provisions of section 11(1A). Assessing Officer did not accept this stand of assessee because, according to him, assessee entered into an agreement with Buildforce in 1994 and sale deed was executed in favour of its nominee after a period of almost 12 years and since in this intervening period of 12 years, possession of property was with Buildforce as per MOU, assessee was not in possession, it could not be held that property was being held under trust wholly for charitable or religious purposes and, thus, assessee had not fulfilled requirement of section 11(1A). CIT(A) allowed the claim. Tribunal affirmed the order of the CIT(A). On appeal the Court held that once legal possession had been handed over by assessee only in 2008-09 then it was to be presumed and accepted that said capital asset was held by assessee trust wholly for charitable purposes till date of its sale and thus, assessee was entitled to claim benefit under section 11(1A). (AY. 2008-09).
CIT (E) v. Shree Ram Ashram Trust Nashik (2024) 298 Taxman 40 (Bom.)(HC)

205 **S. 11 : Property held for charitable purposes-Reassessment-Accumulation of income-Filed revised form-Assessee could not be precluded from filing a revised Form No. 10 during reassessment proceedings. [S. 11(2) 12A,143(1), 147, 148, Form No. 10, Rule 17]**
Held that there is no doubt about the fact that a revised Form No. 10 was filed after the notice under section 148 was issued, albeit, along with the ROI, in response to the said notice. Therefore, the point of inflection between the respondent/assessee and the appellant/revenue was whether a revised Form No. 10 could have been filed by the respondent/assessee during the reassessment proceedings. To claim the benefit of the provisions of sub-section (2) of section 11, the respondent/assessee had to file a statement in the prescribed form, i. e., Form No. 10. The Tribunal has noted that there is no adverse finding by the Assessing Officer concerning the fulfilment of conditions subject to which the accumulation of income was allowed under section 11(2). Accordingly the assessee is not precluded from filing a revised Form No. 10 during reassessment proceedings. (AY. 2008-09)
CIT (E) v. Canara Bank Relief and Welfare Society (2024) 297 Taxman 153 /471 ITR 37 (Delhi)(HC)

206 **S. 11 : Property held for charitable purposes-Form No 10 was filed in the course of assessment proceedings-Amendments in the Act went unnoticed-Delay in filing the Form No 10B is condoned. [S. 10(23A),12A, Art. 226]**
Assessee filed its return of income claiming exemption under section 10(23A). In course of assessment proceedings, assessee claimed exemption under section 11 and also filed Form 10 along with application, seeking condonation of delay in filing same. Assessing Officer passed assessment order without taking into consideration exemption claimed by assessee. CIT (E) dismissed condonation of delay application preferred by assessee, holding that assessee had no intention of filing Form 10 within due date and was not prevented by any reasonable cause from filing same. On writ the Court held the delay in filing Form 10 occurred because amendments went unnoticed by officials of assessee. Assessment year 2016-17 was first occasion subsequent to amendments in section 11 and 13 by way of Finance Act, 2015. Therefore, there was no reason to disbelieve explanation furnished by assessee to explain delay in filing Form 10. Further, mere failure to claim accumulation could not be read as reasons to believe that assessee did not intend to file Form 10. Order passed by Commissioner (E) is to be set aside and, delay in filing Form 10 is condoned. Circular No. 07/2018, dated 20-12-2018, Circular No. 03/2020 dated 3-1-2020, and Circular No. 17/2022, dated 19-7-2022. (AY. 2016-17)
Bar Council of India v. CIT (E) (2024) 297 Taxman 247 /466 ITR 780 (Delhi)(HC)

207 **S. 11 : Property held for charitable purposes - Income from property held for charitable or religious purposes – Reassessment- After the expiry of four years - Charging capitation fees - Contrary to the objectives of a charitable trust - Not eligible for exemptions - Term 'wholly' under section 11 refers to the purpose of the trust-Order of Tribunal setting aside reassessment proceedings is held to be erroneous. [S. 10(23C)(iv), 11, 12, 12A, 12AA, 132, 148, 245D(6), 260A]**
The Court ruled that the assessee was not eligible for exemptions under Sections 11 and 12, as charging capitation fees was contrary to the objectives of a charitable trust.

The Tribunal's decision to uphold the exemption was erroneous. The Court clarified that the term "wholly" in Section 11 pertains to the purposes of the trust, not the property, and is akin to "solely," leaving no room for purposes to be only partially charitable or religious in nature. Additionally, the Tribunal wrongly relied on a Settlement Commission order, which is final and conclusive only for the specific assessment year of the application, not for subsequent years. Consequently, the Tribunal's order was set aside. (AY. 2007-08)
PCIT v. Maharaji Education Trust (2024) 166 taxmann.com 197 (2024)468 ITR 634 (Delhi) (HC)

S. 11 : Property held for charitable purposes-Once exemption is denied and the registration is with drawn the income of the trust should be assessed an AOP-Only surplus profit can be assessed-Application before CBDT for condonation of delay in filing Form No 10BB-The AO is directed to decide the issue of exemption after the order of the CBDT. [S. 12AA, 119, Form 10BB.] 208
Held that once exemption is denied and the registration is with drawn the income of the trust should be assessed an AOP. Only surplus profit can be assessed. The Tribunal also held that the application before CBDT for condonation of delay in filing Form No 10BB is pending. The AO is directed to decide the issue of exemption after the order of the CBDT. (AY. 2019-20, 2020-21)
Church Educational Society v. ACIT (2024) 232 TTJ 553 / 244 DTR 193 (Hyd)(Trib)
Aurora Educational Society v. ACIT (2024) 232 TTJ 553 / 244 DTR 193 (Hyd)(Trib)
Karshik Vidya Parishad v. ACIT (2024) 232 TTJ 553 / 244 DTR 193 (Hyd)(Trib)

S. 11 : Property held for charitable purposes-Rental income-Community hall-No profit motive-Object of general public utility-receipts from such activity do not exceed 20 per cent of the total receipts, proviso to S. 2(15) is not applicable-Corpus donations-Direction to building fund-Exemption under section 11(1)(d) is applicable. [S. 2(15), 11(1)(d), 12, 12AA] 209
Held that the rent charged by the assessee-society for letting out its community hall to public at large for organising social, cultural and religious ceremonies is fair and reasonable and the receipts from the rent is less than 20 per cent of the total receipts and there is no material on record to hold that the assessee is acting with profit motive, proviso to S. 2(15) is not attracted. Benefit of sections 11 and 12 is allowable. Held that corpus donations with specific direction to building fund the exemption under section 11(1)(d) is applicable. (AY. 2016-17)
CIT (E) v. Shree Assistant Maheshwari Samaj (2024) 232 TTJ 17 (UO) (Jodhpur) (Trib)

S. 11 : Property held for charitable purposes-Corpus donation-Foreign donation-Project is struck on account of stay order of High Court-Amount utilised for repayment of bank loan-Exemption is allowable. [S. 11 (1)(d)] 210
Held that the corpus donation received from its founder member for the purpose of construction/running of hospital/dispensary and clinic, there is no violation of s. 11(1)(d) for the reason that the assessee has utilized this donation for repayment of bank loan

which was taken for purchasing the land for the said purpose. Exemption is allowable. (AY-2014-15 to 2016-17)
ACIT (E) v. Padmavati Institute For Medical Education & Science Trust (2023) 37 NYPTTJ 1675 / (2024) 227 TTJ 470 / 233 DTR 321 (Jodhpur) (Trib)

211 **S. 11 : Property held for charitable purposes-Composite objects-Kalyan Mandapam on commercial lines for fees and cess like any other persons carrying business-Receipts from the marriage hall related activities are more than the specified limit as per proviso to S 2(15)-Rejection of exemption is justified-Printing a diary of trustees and their family members does not per se amount to diversion of trust funds for the benefit of trustees-Amounts spent for the Diwali get-together of the trustees in the course of carrying on activities of the trust cannot be considered as diversion of trust funds for the benefit of trustees-No violation under section 13(1)(c)-Depreciation-Commercial principle-Corpus donations-Exemption denied-Includable in total income-Expenditure-Expenditure is to be allowed for earning of income including its activities as deduction-House property for the benefit of the members of one family-Not allowable as deduction. [S. 2(15), 13(1)(c), 22, 24, 37(1), 133A]**
Assessee-trust is running Kalyan Mandapam on commercial lines for fees and cess like any other persons carrying out business operations. Except a minimum amount of donations, the assessee has not spent any amount for charitable purpose as per its objects specified in the deed of trust. Receipts from the marriage hall related activities are more than the specified limit as per proviso to S 2(15). Rejection of exemption is justified. Printing a diary of trustees and their family members does not per se amount to diversion of trust funds for the benefit of trustees. Amounts spent for the Diwali get-together of the trustees in the course of carrying on activities of the trust cannot be considered as diversion of trust funds for the benefit of trustees-No violation under section 13(1)(c). The assesseee Trust is denied the exemption hence the depreciation is directed to be allowed on commercial principle. When exemption is denied corpus donations is to be includable in total income as per the provisions of the Act. As the exemption is denied the expenditure is to be allowed for earning of income including its activities as deduction. As the house property is used for the benefit of the members of one family the expenditure incurred is not allowable as deduction. (AY. 2013-14 to 2019-20)
Ramsahaimal Sahuwala & Sons Charitable Trust v. ACIT (2023) 37 NYPTTJ 1514 /(2024) 227 TTJ 957 / 238 DTR409 / 163 taxmann.com 175 (Chennai) (Trib)

212 **S. 11 : Property held for charitable purposes-Advance for purchase of land in earlier year-Proposal for cancellation of registration is dropped-Addition as notional interest is deleted-Exemption cannot be denied. [S. 12AA, 13(1)(c), 13(2)(a) 13(3)]**
Held that the advances given by the assessee-society for purchase of land for its educational activities without interest or security have been accepted as genuine business deal by the CIT(E) and the proceedings for cancellation of registration under s. 12AA were dropped. There is no violation of provisions of s. 13(1)(c), 13(2)(a) and exemption under S. 11 cannot be denied. (AY. 2016-17)
Rastogi Education Society v. ITO (2024) 227 TTJ 478 / 233 DTR 225 / 161 taxmann.com 220 (Raipur)(Trib)

S. 11 : Property held for charitable purposes-Registered under section 12AA-Applied once again-Directed to allow the exemption. [S. 12A(2), 12AA] 213

Held that CIT(E) having granted registration under S 12AA when the appeal was pending for denial of exemption. Exemption is allowable. Followed, *CIT v. Shree Shyam Mandir Committee [IT No. 234 of 2016, dt. 23rd Oct., 2017 (Raj)(HC)* (AY. 2010-11)

Shri Parnami Panchayat v. ITO (E) (2024) 227 TTJ 603 / 234 DTR 313 / 161 taxmann. com 438 / (SMC) (Jaipur)(Trib)

S. 11 : Property held for charitable purposes-Objective of providing low-interest loans to downtrodden individuals-Interest charged over and above bank interest-Huge profit-Micro-Finance Activity-Business activity-Not entitled to exemption. [S. 2(15) 11(4A) 12 214

Held that as per the report of the Reserve Bank of India the interest charged by the assessee was very high. The activity being commercial in nature the proviso to section 2(15) is not available to the assessee (AY. 2016-17, 2018-19)

Sanghamitra Rural Financial Services v. ACIT (E) (2024)116 ITR 539 (Bang)(Trib)

S. 11 : Property held for charitable purposes-Imparting education-Activities in nature of trade, commerce or business-Separate Books account and balance-sheet is not maintained-Matter remanded for verification. [S. 2(15), 11(4A),12, 12A 13(8)] 215

Tribunal directed the Assessing Officer to examine the matter afresh keeping in mind that if some profits were generated from such activities, the assessee could be granted exemption provided the receipts from such profit do not exceed the quantitative limit of 20 per cent. in terms of the second proviso to section 2(15). Further, the prohibition against carrying on business or service of a commercial nature would not be attracted, if the quantum of such profits did not exceed 20 per cent. of the overall receipts. The matter is restored to the Assessing Officer to examine these facts. (AY. 2011-12, 2012-13, 2018-19)

Dy. CIT (E) v. Nehru Centre (2024)116 ITR 40 (SN)(Mum)(Trib)

S. 11 : Property held for charitable purposes-Accumulation of income-Utilised for capital expenditure-Failure to verify the submission-Section 11(6) which was introduced in the statute with effect from April 1, 2015, is clarificatory in nature-Matter remanded to the Assessing Officer to verify the claim. [S. 11(2), 11(6)] 216

Held, that the assessee is eligible to claim application of income towards acquisition of fixed assets. Though, section 11(6) was introduced in the statute with effect from April 1, 2015, it was clarificatory in nature and applicable for the year under consideration as well. The Assessing Officer, without verifying the submissions of the assessee, had held that no proper system was followed for utilisation of the accumulated income and that the capital expenditure could not be claimed as an application against accumulation under section 11(2). The finding of the Assessing Officer is not in accordance with the provisions of the Act. The matter is set aside to the Assessing Officer to re-examine the assessee's claim. (AY. 2014-15, 2016-17, 2017-18)

Gujarat Safety Council v. ITO (2024)114 ITR 70 (SN) (Ahd)(Trib)

217 **S. 11 : Property held for charitable purposes-Donations-Capitation fees-Assessing Officer had not carried out any independent investigation or examination of persons-Matter remanded.**

Held that the Assessing Officer had not carried out any independent investigation or examination of persons. Matter remanded. (AY. 2017-18, 2018-19)

MAC Charities v. ACIT (E) (2024)114 ITR 17 (SN)(Chennai)(Trib)

218 **S. 11 : Property held for charitable purposes-Commissioner (Appeals) condoned the delay in filing Form No 10-Revenue has not challenged the order of CIT(A)-Accumulation of income-Failure to provide specific purpose for accumulation of Funds Form 10-Entitled to exemption. [S. 11(2), 12A, Form No 10]**

Commissioner (Appeals) had condoned the delay in filing form 10 and the Revenue had not challenged this issue. Hence, the first reasoning on which the Assessing Officer disallowed the accumulation under section 11(2) did not survive. Tribunal held that substantial justice should be preferred to technicalities in deciding the issue. The purpose for which the amount was claimed to be accumulated was specifically mentioned in form 10 of assessment year 2016-17 as to be applied to promote and support research scientists for the advancement of research and development in future. The the Assessing Officer is directed to allow the consequential benefit under section 11(2) for the relevant year. (AY. 2016-17, 2017-18)

National Childrens Fund v. ITO (E) (2024)114 ITR 78 (SN)(Delhi)(Trib)

219 **S. 11 : Property held for charitable purposes-Promote welfare and causes of craftsmen-Ex-parte order by CIT(A)-Issue is set aside to Assessing Officer for de novo assessment as per ratio in *ACIT v. Ahmedabad Urban Development Authority (2022) 449 ITR 1 (SC)* [S. 2(15), 12A]**

Held, that the Commissioner (Appeals) had proceeded ex parte against the assessee in complete violation of the principles of natural justice. He ought to have remanded the appeals to the Assessing Officer for fresh adjudication. Therefore, the issue is set aside to the Assessing Officer for de novo assessment per ratio laid down by the Supreme Court in *Asst. CIT (E) v. Ahmedabad Urban Development Authority(2022) 449 ITR 1 (SC)* after affording an adequate opportunity of hearing to the assessee. (AY. 2011-12, 2013-14, 2015-16, 2016-17)

The Crafts Council Of India v. JCIT (E) (2024) 114 ITR 58 (SN) (Chennai)(Trib)

220 **S. 11 : Property held for charitable purposes-Charitable trust-Exemption under section 11-Allowability-Audit Report in Form No. 10B not filed along with return-AO is directed to verify the Form No. 10B filed by the assessee and allow the claim of exemption under section 11. [Form No 10B]**

Filing of Form No. 10B, would be directory in nature, as such, the AO is not powerless to allow an assessee to file Audit Report, if not filed along with return, at any time before completion of assessment. Further, filing of Form No. 10B beyond the due date, could not disentitle the trust from exemption claimed under section 11. Accordingly, AO is directed to verify the Form No. 10B filed by the assessee and allow the claim of exemption under section 11. [AY 2016-17] [ITA No. 903/Chny/2023, dt. 13/12/2023]

Sri Vetri Vinayagar Educational Trust v. ITO (Chennai)(Trib) (UR)

S. 11 : Property held for charitable purposes-Accumulation of income-Filing of audit report in Form 10B-Before due date of filing of return-Not mandatory-Filed along with the return-Direction of CIT(A) is affirmed. [S. 11(2), 139(1), Form 10B] 221

Held that the return was filed by the assessee on November 29, 2014, and form 10 was filed one day later on November 30, 2014. The assessee also brought on record evidence of filing of forms 10 and 10B on November 30, 2014, which was within the due date as prescribed under the Act and Rules. The audit report was filed in this case on November 30, 2014, which was within the time as admissible under the provisions of section 139(1) of the Act. Direction of the Commissioner (Appeals) to allow the deduction under section 11(2) of the Act is affirmed. (AY. 2014-15)

Dy. CIT (E) v. Gujarat State Board of School Text Book (2024)113 ITR 33 (SN)(Ahd) (Trib)

S. 11 : Property held for charitable purposes-Filing of audit report-Form No 10B was filed before passing of the intimation-Denial of exemption is not valid-Fee for late filing-Filed return within prescribed time-limit-Late fee is not leviable. [S. 139(1), 143(1), 234F, Form No 10B] 222

Held that that as on the date on which the intimation under section 143(1) of the Act was passed, the auditor of the assessee-trust had already filed the audit report in form 10B, before such intimation under section 143(1) of the Act was issued. There was no deliberate or mala fide intention on the part of the assessee or its auditor to file the audit report in form 10B belatedly. The claim of application of income could not be denied to the assessee only on the ground that the assessee or the auditor of the assessee omitted to file form 10B along with return of income, when it was submitted to the tax authorities before the intimation under section 143(1) of the Act was issued. The assessee-trust had filed its return of income as on September 26, 2018, within the prescribed time-limit under section 139(1) of the Act. Section 234F is not applicable. (AY. 2018-19)

Shiksha Foundation v. ITO (E) (2024)113 ITR 14 (SN)(Ahd)(Trib)

S. 11 : Property held for charitable purposes-Accumulation of income-Application of income-Non-corpus fund shown at figure higher than investment shown-Matter remanded for fresh adjudication. [S. 2(15), 11(2), 11(5), 13(1)(d)] 223

Held that the audited financial statements, statement of income and the return of income for the assessment year 2013-14 were not filed by the assessee during the proceedings before the authorities but had been filed along with the return of income, meaning thereby, that these documents were already available with the authorities below, but they did not look into them. In the interest of justice and fair play, the matter was to be remanded for fresh adjudication. That the balance-sheet of the assessee showed that the capital fund shown by the assessee was utilised in fixed assets, capital work-in-progress and current assets. Such amount represented the application of income and, therefore, was to be excluded while calculating the amount to be invested under the provisions of section 11(2) read with section 11(5) of the Act. Nevertheless, the assessee had not represented the facts properly, the matter is remanded to the Assessing Officer for de novo adjudication as per the provisions of law. (AY. 2018-19)

Vaidic Dharma Sansthan v. Dy. CIT (E) (2024)113 ITR 1 (SN) (Bang)(Trib)

224 **S. 11 : Property held for charitable purposes-Audit report-Filing audit report in Form No. 10B is procedural in nature-For not filing audit report along with return, exemption cannot be denied-Matter is remanded to the file of CIT(A). [S. 12A, Form No. 10B]**

Assessing Officer denied exemption under section 11 on reasoning that there was a delay of 235 days in filing Form No. 10B (audit report). CIT(A) dismissed appeal by stating that neither he nor the Assessing Officer were empowered to condone delay. On appeal the Tribunal held that requirement of filing audit report in Form No. 10B is procedural in nature and, therefore, not filing audit report along with return of income was a procedural omission only and could not be impediment in law in claiming exemption. Since due to confusion in interpretation of law audit report in Form No. 10B was filed after specified period, delay in filing audit report in Form No. 10B deserved to be allowed. Matter is restored to CIT(A) to allow exemption. (AY. 2021-22)

Bhagwant Kishore Memorial Educational Society v. ITO (2024) 209 ITD 179 (Delhi) (Trib.)

225 **S. 11 : Property held for charitable purposes-Advancement of general public utility-Sponsorship agreements with few Indian business groups-Neither sponsor nor assessee could be attributed any profit motive from outcome of these sponsorship agreements-Eligible for exemption. [S. 2(15), 12]**

Assessee, an apex sports body in India representing country, claimed exemption under sections 11 and 12. During the year, assessee entered into sponsorship agreements with few Indian business groups and received certain amount as sponsorships. Assessing Officer held that the nature of activities in respect of sponsorship agreements with various sponsors is in nature of business and held that assessee was hit by second proviso to section 2(15) and, hence, not eligible for benefit of exemption under sections 11 and 12. CIT(A) allowed the exemption. On appeal the Tribunal held that the assessee is representing country under aegis of Government in amateur international sports events and arranging these sponsorship contracts is in itself a great task for assessee as sponsors were paying out of their profits for motivating assessee and sportspersons of country in participating in international events. Therefore neither sponsor nor assessee could be attributed any profit motive from outcome of these sponsorship agreements. Order of CIT(A) is affirmed. (AY. 2017-18)

DCIT(E) v. Indian Olympic Association. (2024) 209 ITD 209 (Delhi) (Trib.)

226 **S. 11 : Property held for charitable purposes-Audit report Form 10B-Delay of 31 days-Pending before CIT(E)-Matter is remanded. [S. 12A(1)(b), Form 10B]**

Assessee-trust was denied benefit of section 11 by Assessing Officer on ground that it did not furnish audit report in Form 10B within prescribed time. CIT(A) up held the order of the AO. Tribunal held that since assessee had filed an application for condonation of delay of 31 days in filing Form 10B before CIT (E), but said application was still pending for disposal. Tribunal directed the Assessing Officer to restore exemption proceedings and to decide claim of assessee for exemption under section 11 after taking into consideration decision of CIT(E) on application of assessee for condonation of delay in filing Form 10B (AY. 2022-23)

Sha Hurgowan Anandji Desai Charities v. DIT, (2024) 209 ITD 248 (Mum) (Trib.)

S. 11 : Property held for charitable purposes-Delay in filing Form No. 10-Matter remanded to the file of Assessing Officer-Assessee is directed to file exemption application before CIT(E). [S. 11(2), Form No. 10] 227

Assessee-trust claimed exemption under section 11(2). Assessing Officer disallowed claim of exemption on ground that assessee filed Form No. 10 after due date. CIT(A) confirmed the order of the AO. On appeal the Tribunal held that in view of Circular No. 17/2022, dated 17-7-2022, matter is restored back to Assessing Officer with direction to assessee for applying to Commissioner (E) and seek condonation of delay in filing Form No. 10 and after condonation of delay in filing Form No. 10 by Commissioner (E), Assessing Officer would decide claim of exemption under section 11(2). (AY. 2021-22)

Shree Pushkar Foundation v. ITO (2024) 209 ITD 219 (Mum) (Trib.)

S. 11 : Property held for charitable purposes-Return was filed within time allowed under section 139(4)-Assessing Officer is directed to allow assessee's claim of exemption. [S. 12A, 139(1), 139(4), Form No. 10B] 228

Assessee-trust had filed e-return of income on 9-2-2019 along with Form No. 10B declaring total income at nil after claiming exemption under section 11. Assessing Officer disallowed assessee's claim on ground that return of income was filed beyond time limit prescribed under section 139(1). CIT(A) confirmed the action of the AO. On appeal the Tribunal held that provision of section 139(4) with effect from 1-4-2017 lays down that any person who has not furnished return of income within time allowed under section 139(1), may furnish return for any previous year at any time before end of relevant financial year or before completion of assessment whichever is earlier. Since relevant assessment year ends on 31-3-2019, return filed by assessee on 9-2-2019 was within provision of section 139(4). The Assessing Officer is directed to allow claim of exemption under section 11. (AY. 2018-19)

Susila Educational Trust v. ITO (2024) 209 ITD 253 (Chennai) (Trib.)

S. 11 : Property held for charitable purposes-Development of areas and infrastructural activities-Autonomous body established by Government of Gujarat-Matter is set aside to file of Assessing Officer to consider same in accordance with law as enumerated by Supreme Court in case of Asstt. CIT (E) v. Ahmedabad Urban Development Authority (2022) 291 Taxman 11/ 449 ITR 1 (SC). [S. 2(15), 12AA] 229

Assessee, is an autonomous body, was established by Government of Gujarat for development of areas and infrastructural activities. It claimed exemption under section 11 of the Act. The Assessing Officer denied exemption. Commissioner (Appeals) allowed exemption holding that activities of assessee were not covered by proviso to section 2(15) read with section 13(8). On appeal the Tribunal set aside the matter to file of Assessing Officer to consider the same in accordance with law as enumerated by Supreme Court in case of *Asstt. CIT (E) v. Ahmedabad Urban Development Authority (2022) 291 Taxman 11/ 449 ITR 1 (SC).* (AY. 2016-17, 2017-18)

DCIT (E) v. Surat Urban Development Authority. (2024) 209 ITD 424 (Ahd) (Trib.)

230 **S. 11 : Property held for charitable purposes-Accumulation of income-Failure to file Form 10-Assessing Officer is directed to reconsider issue after disposal of application filed by assessee for condonation of delay in filing Form 10. [S. 11(2), 11(5), Form No. 10]**

Assessee-trust earned income from various sources and invested balance amount in fixed deposits. Assessee neither filed Form 10 explaining purpose of accumulation of income under section 11(2) nor filed any details of investment in fixed deposits before Assessing Officer. Assessing Officer made additions. CIT(A) up held the order of the AO. On appeal the Tribunal held that the assessee submitted that it had not filed Form 10 either with return of income or at assessment/appellate stages, but said Form-10 had been filed along with resolution of executive committee indicating accumulation of income for purpose of objects of trust and also filed relevant proof of investment under section 11(5). Assessee had also filed a petition for condonation of delay in filing Form 10 and said petition was pending for disposal. Since assessee had filed Form 10 along with resolution of executive committee and petition for condonation of delay was pending for disposal, matter is remanded back to Assessing Officer to reconsider issue in light of Form 10 filed by assessee after disposal of application filed by assessee for condonation of delay. (AY. 2020-21)

Sri Laxmi Narsimha Temple Nalgonda v. ITO (2024) 209 ITD 474 (Hyd) (Trib.)

231 **S. 11 : Property held for charitable purposes-Non-profit organization-Established for welfare of craftsmen-Exemption under section 11 to be decided in light of judgment of Supreme Court in case of Asstt. CIT (E) v. Ahmedabad Urban Development Authority(2022) 291 Taxman 11/ 449 ITR 1 (SC) [S. 2(15)]**

Assessee was a non profit organization having objects to promote welfare of craftsmen. During assessment, Assessing Officer invoked proviso to section 2(15) in respect of certain income which in her view were in nature of trade and commerce and denied exemption available under section 11. Commissioner (Appeals) by an ex parte order upheld denial of exemption. On appeal the Tribunal held that Commissioner (Appeals) should have remanded appeals to Assessing Officer for fresh adjudication in light of judgment of Supreme Court in case of *Asstt. CIT (E) v. Ahmedabad Urban Development Authority (2022) 291 Taxman 11/ 449 ITR 1 (SC)* rather than giving ex-parte decision as same was in complete violation of principles of natural justice. Accordingly the Assessing Officer is directed to consider claim of exemption under section 11 in light of Judgment of Supreme Court in case of Ahmedabad Urban Development Authority (supra). (AY. 2011-12, 2013-14, 2015-16, 2016-17)

Crafts Council of India v. Jt. CIT (2024) 209 ITD 581 (Chennai) (Trib.)

S. 11 : Property held for charitable purposes-Accumulation of income-Accumulated certain amount for purpose of building funds-Re development work-Delay in redevelopment-NOC from Airport Authority-Application filed under section 11(3A) was pending consideration before Assessing Officer-Section 11(3)(c) is not applicable-Period of accumulation was ending on 31-3-2018 vide resolution dated 29-3-2018 and in order to rectify said mistake revised Form 10 was filed by assessee stating period of accumulation to be till 31-3-2023-Claim was under section 11(2) and not under section 11(1)(a), revised Form 10 should be considered for determining accumulated funds available with assessee under section 11(2). [S. 11(2), 11(3A), 11(5), 12A, 13(3)(c), Form No 10] 232

Assessee is a charitable trust registered under section 12A. Assessee had accumulated an amount of Rs. 4 crore during year 2012-13 for purpose of building funds. The assessee did not have surplus money to set apart or accumulate under section 11(2). Thereafter, assessee filed revised Form 10. Assessing Officer made additions in income of assessee on ground that income accumulated under section 11(2) did not satisfy conditions laid out under section 11(3). On appeal the CIT(A) deleted the disallowance. On appeal the Tribunal held that the assessee has submitted that funds accumulated in financial year 2012-13 for redevelopment work could not be utilised in year under consideration as it operated very close to Mumbai Airport and for any extension/redevelopment work it had to take NOC from Airport Authority of India and because of said reason redevelopment work of its school building was delayed. Furthermore assessee had filed an application under section 11(3A) in this regard. Since assessee's application filed under section 11(3A) was pending consideration before Assessing Officer, section 11(3)(c) would not apply to instant case. The Tribunal affirmed the order of the CIT(A). Assessing Officer also rejected assessee's claim of accumulation of funds under section 11(2) on ground that period of accumulation was stated to be ending on 31-3-2018 and, thus, assessee did not have income which it intended to accumulate or set aside under section 11(2). Amount was decided to be accumulated for carrying out purposes of trust vide resolution dated 29-3-2018 and in order to rectify said mistake revised form 10 was filed by assessee stating period of accumulation to be till 31-3-2023. Further, mode of investment was also as per section 11(5) as amount was deposited in scheduled banks or co-operative societies as per section 11(5)(iii). CIT (A) deleted the disallowance. On appeal the Tribunal held that since assessee's claim was under section 11(2) and not under section 11(1)(a), revised Form No. 10, which stated period of accumulation till 31-3-2023, should be considered for determining accumulated funds available with assessee under section 11(2). Order of CIT(A) deleting the addition is affirmed. (AY. 2018-19)

DCIT v. Vile Parle Mahila Sangh (2024) 209 ITD 587 (Mum)(Trib.)

S. 11 : Property held for charitable purposes-Donation to another trust with similar objects-Allowed as deduction in earlier years and latter years-Denial of exemption is not valid. [S. 12A] 233

Held that the Assessing Officer himself in the subsequent assessment year has allowed the claim of the assessee under section 11 of the Act and restricted the donation paid to the Council alone for disallowance. Therefore, there was no merit in denying the

benefit under section 11 of the Act without considering the actual charitable activities of the assessee-trust. Order of CIT(A) is affirmed. (AY. 2015-16
Dy. CIT v. Sheriff Foundation (2024)112 ITR 72 (SN) (Delhi)(Trib)

234 **S. 11 : Property held for charitable purposes-Corpus donations-Distinct and separate from income derived from property held under trust-Not entitled to exemption. [S. 2(24), 11(1(a), 11(1)(d), 12(1)]**
Held that Corpus donations are distinct and separate from income derived from property held under trust hence not entitled to exemption. (AY. 2016-17)
Dawoodi Bohra Musafirkhana Trust v. ITO (E) (2024)112 ITR 8 (SN)(Ahd)(Trib)

235 **S. 11 : Property held for charitable purposes-Running business school-Payment to related party-Assessing Officer had not demonstrated how payment for business support services was not commensurate with market value of services availed of--Salary expenditure to faculty members-Disallowance for failure to file qualifications of teachers not sustainable-Disallowance is not warranted-Payment of commission to Consultants and counsellors is justified-Disallowance of expenses on computers to students is not reasonable. [S. 12A 13(2)(c), 13(2)(c), 13(2)(g), 13(3)]**
Held that the Assessing Officer had not demonstrated how the business support expenses paid to F Ltd. were not commensurate with the market value of the services availed of from F Ltd. an entity said to be covered under section 13(3) and thus the assessee violated the conditions under section 13(2)(g) of the Act. The statement of assessable income, balance-sheet and statement of profit and loss account of F Ltd. showed income. The disallowance is not sustainable. That salary expenditure to faculty members was disallowed due to non-filing of qualifications and experience and elaborate the services rendered by persons. The assessee had engaged highly technical qualified persons in whole-time management activities of trust as well as regular time teachers in business school. The details of educational qualification and experience in absence of any other evidence to the contrary could not be said to be not just fair and reasonable. That the payment as commission to consultants and counsellors is justified. That keeping in view the invoices, quotations and student-wise list the disallowance of expenses on computers to students is not fair and reasonable. Additions confirmed by the CIT(A) is deleted. (AY. 2012-13)
Shri Balaji Human Resources Development Trust v. ITO (2024)112 ITR 41 (SN)(Delhi)(Trib)

236 **S. 11 : Property held for charitable purposes-Denial of exemption-Exemption denied due to personal benefit-Interest-free loans to trustees-Trustees using loans to acquire immovable properties-Expenditure disallowed as capital expense-Remand for fresh consideration. [S. 12, 13(1)(c)(ii), 250]**
The assessee, a charitable trust, had provided interest-free loans to trustees, who used the funds to acquire immovable properties for construction of nursing college. These properties were leased back to the trust. The Assessing Officer disallowed a lease deposit of ₹ 25 lakhs, treating it as capital expenditure, and also disallowed hostel expenses of ₹ 27,72,490 as unpaid during the year. Further, the AO found that the trustees had received loans totalling ₹ 1,70,11,398, which were used to buy properties in their individual capacities, violating Section 13(1)(c)(ii), leading to denial of exemption

under Sections 11 and 12. The CIT(A) upheld the AO's decision but did not address specific grounds relating to disallowed expenditures and the use of loans for property acquisition. The CIT(A), despite the assessee making specific submissions and enclosing documentary evidence, did not adjudicate specific grounds taken before him. The Tribunal, noting this, directed the CIT(A) to reconsider these issues. (AY. 2013-14)
M. A. J. Foundation v. ITO (E) (2024) 112 ITR 78 (SN) (Bang)(Trib.)

S. 11 : Property held for charitable purposes-Engaged in upliftment of poor, providing training and skill development of poor in rural areas in backward districts-Entitled to exemption. [S. 2(15)] 237
Held, dismissing the appeals, that the Tribunal having held for the assessment years 2011-12 to 2014-15 that the assessee was not engaged in any trade, commerce or business and thus the mischief of proviso to section 2(15) was not attracted in the case of the assessee, and there being no change in facts order of CIT(A) is affirmed. (AY. 2015-16 to 2017-18)
ITO (E) v. Professional Assistance for Development Action (2024)111 ITR 87 (SN)(Delhi)(Trib)

S. 11 : Property held for charitable purposes-Prima facie adjustments-Claim inadvertently made under Section 10(23C)-Failure to file mandatory form-Prima facie adjustment is proper-No action can be taken merely on basis of Form 10B filed in Appellate Proceedings-Direction of Commissioner (Appeals) to avail of remedy under Section 119 to file revised return is proper [S. 11, 119, 143(1), 154, Form No 10B] 238
Held that there was no denial of the fact that the claim for deduction under section 11 of the Act was not made in the return of income. The assessee had claimed deduction under section 10(23C) of the Act in the return. As the form essential for claiming exemption under section 10(23C) was not furnished, the claim had been rightly rejected. Therefore, the adjustment made while processing the return, could not be faulted. Tribunal also held that there is no error in the direction of the Commissioner (Appeals) to avail of the remedy under section 119 of the Act to file a revised return. The assessee was allowed an opportunity in the intimation to file a rectification application, if so required, which was not availed of. Accordingly, the remedy of rectification of mistake had to be availed of before resorting to the alternate remedy under section 119(2)(b), if required. The assessee may file an application under section 154 of the Act to rectify the mistake in the intimation, if deemed proper. The assessee was also free to avail of the remedy under section 119 of the Act, if he so desired. (AY. 2022-23)
Shri R. V. Shah Charitable Trust v. Dy. DIT (2024)111 ITR 83 (SN)(Ahd)(Trib)

S. 11 : Property held for charitable purposes-Accumulation-Not routed through income and expenditure Account-Addition is deleted-Nodal agency for rebuilding portions of the State of Uttarakhand affected by floods-Income-Received funds for rebuilding flood-hit State-Utilised funds as per requirements of State Government-Balance remaining after work repayable to payer-Assessee is not owner of funds-Funds not income-Addition is deleted. [S. 4, 11(2)] 239
The Assessing Officer held that the sums so received and accumulated ought to have been routed through the income and expenditure account and ought not to have been

transferred directly to the balance-sheet. An addition was made as income. On appeal the Commissioner (Appeals) deleted the addition. On further appeal the Tribunal held that since there was a categorical finding that the sum under the Swachh Bharat Abhiyan Scheme had been routed through the income and expenditure account. Order of CIT(A) is affirmed. Assessee received funds from public sector undertakings and then disbursed them as per the requirements of the State Government. It contended that these funds never formed a part of the income of the assessee as the assessee was not the owner of those funds but merely facilitated their collection and disbursal. Any balance in the relevant bank account after the rehabilitation work was complete was to be returned to the respective public sector undertakings. The AO assessed as income. CIT(A) deleted the addition. On appeal the Tribunal held that the assessee was not the owner of the funds received from the public sector undertakings in relation to the relief and rehabilitation work in Uttarakhand. Order of CIT(A) is affirmed. (AY. 2015-16)
Dy. CIT (E) v. Sewa-THDC (2024) 110 ITR 151 (Delhi)(Trib)

240 **S. 11 : Property held for charitable purposes-Object of general public utility-Business-Income from organising meetings, conferences and seminars, membership fee from members, interest on deposits and rentals from properties-Disseminate knowledge on specialised issues to members and non-members-Not business purposes-Subscription fee from existing members on annual basis as well as admission fee from new members is not income by virtue of principle of mutuality-Advancement of main object is not hit by proviso to Section 2(15) even post-amendments-Invested in terms of section-Entitled to exemption in respect of entire receipts-Depreciation-Directed to allow depreciation as application of income-Capital Gains-Sale of old motor car and purchase of new car-No opening written down value for year-Even if entire cost claimed as application of income, assessee is entitled to claim deduction of written down value from sale consideration for calculating capital gain-Accumulation of income-Accumulation is to be computed on gross receipts and not net receipts [S. 2(13), 2(15), 10(23C), 11(1)(a), 11(2), 11(5)(iii), 12A, 13(8), 32, 251(2)]**
The assessee is an association of various industrialists, organisations and other commercial entities for the development of trade, commerce and industry, was set up with the sole purpose of promotion and protection of Indian business and industry and was duly registered under section 12A of the Act as a charitable association with the main objects to promote and protect the trade, commerce and industries in or with which Indians were engaged or concerned. The membership of the assessee was comprised of business houses, corporate houses within the country and abroad. The assessee derived income from organising meetings, conferences and seminars for members and non-members on cost-to-cost basis and by way of membership fees from members besides earning or accruing interest on fixed deposit receipts, rental income and miscellaneous income from the properties held by the assessee. For the assessment year 2013-14, the assessee claimed exemption under section 11 of the Act. The Assessing Officer treated the activities of organising conferences, meetings and seminars as business activities by invoking the proviso to section 2(15) read with section 13(8) on the ground that the assessee was charging consideration in the form of sponsorships, that the receipts from these activities exceeded Rs. 25 lakhs in terms of the proviso to section 2(15) and denied the exemption claimed under section 11 by bifurcating the

total receipts into two components, namely, business income and charitable income under section 11 and computed the income accordingly and brought to tax the business income whereas the deduction was allowed in respect of charitable income. Accordingly, he added Rs. 2,00,75,470 as net business income by apportioning the administrative expenditure proportionately between the business and charitable receipts or income based on the gross quantum of receipts under these heads. The exemption was allowed to the assessee only in respect of interest, rental and miscellaneous income. On appeal, the Commissioner (Appeals), after issuing show-cause notice under section 251(2) of the Act, enhanced the income treating the entire receipts as business receipts and taxed it at the rate applicable to companies. On appeal the Tribunal held that the assessee, in order to protect and promote trade, commerce and industry had been organising the activities of seminars, meetings and conferences in order to disseminate knowledge on specialised issues to members and non-members on the subject with specialised knowledge. During the events experts on the subjects were invited to speak on the occasion and also participative discussion and interactions were held and members and non-members were invited to such activities of the assessee. It was not organising any trading programs to impart skill development courses by specialist and skilled knowledge and certified courses but general meetings, conferences and seminars were organised to discuss and debate issues in current topics, amendments of the Income-tax Act, Micro, Small and Medium Enterprises Development Act, foreign trade policy and other issues concerning trade, commerce and industries. During the year, the receipts from the activities of holding and organising meetings, seminars and conferences were Rs. 9,48,14,435 and the profits as computed by the Assessing Officer constituted only 2 per cent. of such receipts. Thus, the consideration charged by the assessee was just a cost basis and nominally above the cost. However, if the administrative expenses were allocated on a rational and scientific basis between the activities of holding meetings, seminars and conferences on the one hand and other charitable receipts such as interest, rental and miscellaneous income on the other hand, then there would be a huge loss from these activities meaning thereby that the assessee had not been even charging from these sponsors, participants, members or non-members sums enough to cover the cost of the assessee and therefore it could be reasonably presumed that the assessee had provided these activities below the cost. In the subsequent assessment year 2014-15, the Assessing Officer had computed loss of Rs. 77,87,698. Therefore, the assessee was not carrying on any activity of holding meetings, seminars and conferences for business purpose but only in support of its main object and it charged from its participants, members and non-members the amount of fee which did not even covers the cost of holding such events. That the administrative and other incidental expenses of holding and organising seminars, conferences and meetings were met out of other charitable income received from interest on fixed deposit receipts, rental and miscellaneous income. Hence, the assessee was entitled to exemption under section 11 as the activities of the advancement of main object was not hit by the proviso to section 2(15) of the Act even post-amendments. Tribunal directed the AO to allow depreciation as application of income. As regards capital gains in respect of sale of old motor car and purchase of new car, there is no opening written down value for the year. Even if entire cost claimed as application of income, assessee is entitled to claim deduction of written down value

from sale consideration for calculating capital gain. The accumulation of income is to be computed on gross receipts and not net receipts. (AY. 2013-14, 2014-15)
Indian Chamber of Commerce v. Dy. CIT (E) (2024) 110 ITR 30 /230 TTJ 364 /238 DTR 313 (Kol)(Trib)

241 **S. 11 : Property held for charitable purposes-Covid-19-Delay in filing return and Form No 10B-Supreme Court extending the period of limitation-Entitled to exemption. [S. 12AA, Form No 10B]**
Held that the return was filed in form 7 and form 10B on March 31, 2021 and March 30, 2021 while the extended due date for filing the return in the relevant assessment year was February 15, 2021. Due to the covid-19 pandemic, the Supreme Court had extended the period of limitation with respect to judicial or quasi-judicial proceedings. Therefore, there was no delay in filing the return or form 10B. The order of the Commissioner (Appeals) was set aside and the Assessing Officer was to allow the exemption claimed under section 11 of the Act. (AY. 2020-21)
Onkar Society for Engineering and Technological Research v. ITO (2024) 110 ITR 393 (Kol)(Trib)

242 **S. 11 : Property held for charitable purposes-Research work in area of micro wave electronics-No changes in facts-Denial of exemption is not valid. [S. 2(15) 12A]**
Assessee, an association, was engaged in research work in area of micro wave electronics. It claimed exemption under sections 11 and 12. Assessing Officer held that activities of assessee were purely research work and did not fall under section 2(15). CIT(A) held that dominant purpose is charitable and did not carry on business hence the exemption is allowed. On appeal the Tribunal held that since in earlier years, claim of assessee was accepted and for current assessment year also, there was no change in facts and circumstances, order of CIT(A) allowing the claim is affirmed. (AY. 2010-11)
DCIT v. Society for Applied Microwave Electronics Engineering Research Bombay. (2024) 208 ITD 339 (Mum) (Trib.)

243 **S. 11 : Property held for charitable purposes-Sale of property-Invested in bank fixed deposit-Converted into capital gain account scheme-Utilised entire amount of capital gain for purchasing other property in financial years 2022-23 and 2023-24-Instruction No. 883, dated 24-9-1975-Entitled to exemption. [S 11(1), 11(5), 11(IA)]**
Assessee-trust sold a property on 28-4-2015 at Rs. 75 lakhs and made investment in a bank in fixed deposits. Fixed deposits were matured on 29-4-2018, which were further renewed up to 29-4-2021, which were later on converted into capital gain account scheme. Assessee utilized entire amount of capital gain for purchasing another property in financial years 2022-23 and 2023-24 and claimed exemption under section 11(1A) Held that as per Instruction No. 853, dated 24-9-1975, the assessee qualified for exemption under section 11(1A) in relevant assessment year 2016-17. (AY. 2016-17)
Vaishnav Samaj Trust v. ITO (2024) 208 ITD 507/ (2025) 233 TTJ 946 (Surat) (Trib.)

S. 11 : Property held for charitable purposes-Loan scholarships to Indian students in India for education/higher education abroad-Application of income-Eligible for exemption. [S. 11(1)(c)] 244

Assessee-trust granted loan scholarships to Indian students in India for their higher education overseas. It filed nil return claiming exemption under section 11. Assessing Officer held that assessee had given loan/grants to various students who were studying outside India hence denied claim of exemption on ground that charitable purpose and its execution should be in India. CIT(A) allowed the claim. On appeal the Tribunal held that in assessee's own case for assessment year 2012-13 it was held that loan scholarships given to Indian students in India for education/higher education abroad would be considered as application of income for charitable purposes in India and, thus, would qualify for exemption under section 11. Appeal of Revenue is dismissed. (AY. 2011-12)

ITO (E) v. JN Tata Endowment for the Higher Education of Indians. (2024) 208 ITD 573 (Mum) (Trib.)

S. 11 : Property held for charitable purposes-Fresh registration under section 12AB-Original registration under Section 12AA up to Assessment year 2021-22-Denial of exemption is not valid. [S. 12AA, 12AB, 13] 245

Assessee-society registered under section 12AA, filed its return claiming exemption under section 11. Assessing Officer denied the exemption on ground that assessee had not furnished details of fresh registration under section 12AB obtained by it. On appeal the CIT(A) affirmed the order of the AO. On further appeal the Tribunal held that the assessee had applied for fresh registration under section 12AB in prescribed form within time allowed by statute. Original registration obtained under section 12AA would protect assessee up to assessment year 2021-22 for claim of exemption under section 11 as long as other conditions prescribed in section 11 to 13 had been fulfilled by assessee. Therefore, assessee would be duly entitled for claim of exemption under section 11 for assessment year 2021-22 (AY. 2021-22)

Shambhu Dayal Modern School. v. ITO (2024) 208 ITD 603 (Delhi) (Trib.)

S. 11 : Property held for charitable purposes-Application of income-Less than 85 per cent of total receipts-Matter is remanded for de novo adjudication before NFAC. [S. 12A, 250, Form No 10] 246

Assessee trust was registered under section 12A and was running several educational institutions. It filed its return of income claiming exemption under section 11. Assessing Officer made certain additions to assessee's income on ground that assessee had spent less than mandatory 85 per cent of total receipts. Assessee filed appeal before National Faceless Appeal Centre (NFAC) and submitted that relevant Form No. 10, which was filed before department explaining amount of money, which was yet to be spent and how they planned to spend remaining amount in course of next five years, needed to be examined and considered by Assessing Officer while framing assessment order, which was not done by him. NFAC dismissed assessee's appeal holding that there was no material on record to warrant interference with order of Assessing Officer. Tribunal held that since NFAC had not adjudicated issue on merits, matter is remanded back to file of NFAC for de novo adjudication. (AY. 2016-17)

Giridih Carmel Convent School v. DCIT (2024) 208 ITD 597 (Ranchi) (Trib.)

247 **S. 11 : Property held for charitable purposes-General utility to public--Acquisition and sale of immovable properties-Issue is remanded to Assessing Officer to consider afresh strictly in light of observations made by Apex Court in CIT(E) v. Ahmedabad Urban Development Authority (2022) 291 Taxman 11/ 449 ITR 1 (SC). [S. 2(15)]**

Assessee is engaged dominantly in activity of development and sale of properties. It filed its return of income declaring profit on total income/gross receipt which was claimed exempt as per provisions of section 11. Assessing Officer held that assessee is engaged in activity in nature of trade, commerce or business in as much as one of dominant activities of authority is acquisition and sale of immovable properties and receipts from which were in excess of ceiling stipulated in second proviso of section 2(15). He disallowed exemption under section 11 of the Act. CIT(A) allowed the exemption. On appeal the Tribunal held that since verification/examination had not been carried out by authorities below in terms of observations and guidelines framed by Apex Court in case of *CIT(E) v. Ahmedabad Urban Development Authority (2022) 291 Taxman 11/ 449 ITR 1 (SC)* issue is to be remanded to file of Assessing Officer to consider same afresh upon examining nature of assessee's activities and to pass a reasoned order strictly in light of observations made by Apex Court. (AY. 2014-15 to 2017-18)

DCIT(E) v. Jhansi Development Authority. (2024) 208 ITD 692 (Delhi) (Trib.)

248 **S. 11 : Property held for charitable purposes-Failure to furnish Form 10/10B before due date prescribed under Section 139(1)-Directory in nature-Exemption cannot be denied. [S. 11(2), 139(1), 143(1), Form No 10A, 10B]**

Assessee-trust claimed exemption under section 11 in return of Income. CPC, Bengaluru disallowed claim concluding that assessee failed to e-file Audit Report in form 10B one month prior to due date of filing return. CIT(A) affirmed the order of the AO. On appeal, Tribunal held that requirement of filing Form 10/10B is merely directory in nature and failure to furnish Form 10/10B before due-date prescribed under section 139(1) cannot be so fatal so as to deny very claim of exemption under section 11(2). Since delay in filing Form 10B is due to technical issues and was beyond control of assessee, procedural requirement should not deny substantive claim of exemption under section 11. The AO is directed to grant exemption under section 11. (AY. 2022-23)

ITO (E) v. Takshshila Foundation (NGO) (2024) 208 ITD 677 (Ahd) (Trib.)

249 **S. 11 : Property held for charitable purposes-Delay in filling Form 10B-Not mandatory-Issue is remanded back to Assessing Officer to consider claim of assessee in accordance with law by carrying out necessary verification of Form 10B filed by assessee-Delay of 29 days in filing of appeal before CIT(A) is condoned. [S. 119, 143(1)(a), 249 Form No 10B]**

Tribunal condoned the delay of 29 days in filing the appeal before CIT(A). Assessee-trust filed its return of income declaring shortfall in application of income. Assessee filed Form 10B i. e. audit report, before filing return of income. However, there was a delay of 29 days in filing same. Assessee had made applications to condone delay in filing Form 10B. However, same was not accepted and assessee's return was processed wherein exemption claimed by assessee under section 11 was denied. CIT(A) up held the order of the AO. On appeal the Tribunal held that filing of Form 10B was not mandatory but

directory, when audit report was available while passing intimation under section 143(1)(a) and requirement of law were complied with, exemption under section 11 could not be denied. It was further noted that circulars issued by CBDT which were available at time when assessee had made applications to condone delay in filing Form 10B had not been considered by authorities. On facts, issue is remanded back to Assessing Officer to consider claim of assessee in accordance with law by carrying out necessary verification of Form 10B filed by assessee. (AY. 2022-23)
Sarvadeivatha Education Trust v. ITO (2024) 208 ITD 759 (Bang) (Trib.)

S. 11 : Property held for charitable purposes-Delay in filing Form 10B-Audit is completed before due date of filing of return-Procedural delay-CIT(A) is directed to pass fresh order on merits as per law. [S. 12A, 139(1), Form No. 10B] 250
Assessee trust claimed exemption under section 11. Assessing Officer disallowed same on ground that Form 10B is not submitted by auditor within due date i. e. under section 139(1). However, same was filed after delay of 31 days and the audit is completed well before due date fixed for filing Form 10B. The AO disallowed the claim of exemption. CIT(A) affirmed the order of the AO. On appeal the Tribunal held that the Assessee had provided a reasonable cause of lapse on part of auditors in filing Form 10B hence the Commissioner (Appeals) is supposed to take into consideration that non-filing of audit report along with return of income was a procedural omission. Therefore the matter is remanded to the file of Commissioner (Appeals) with the direction that he should take into consideration Form 10B of assessee and pass an order afresh on merits as per law. (AY. 2022-23)
Shakuntalam Bal Vikas Society v. ITO (2024) 208 ITD 772 (Delhi) (Trib.)

S. 11 : Property held for charitable purposes-Intimation-Form 10B was filed-Failure to mention 12A registration-Adjustment is bad in law-Entitled to exemption. [S. 12A,139(1), 143(1)(a), R. 17B, Form 10B] 251
Assessee-trust claimed exemption under section 11. Assessing Officer by an intimation order under section 143(1)(a) disallowed claim on grounds that section 12A registration number was not mentioned and Form No. 10B (audit report) was not furnished one month prior to due date of filing of return of income under section 139(1). CIT(A) affirmed the order of the AO. On appeal the Tribunal held that since assessee is granted registration under section 12A during pendency of assessment proceedings and Form No. 10B is available with CPC while processing return, assessee is entitled to exemption under section 11. (AY. 2021-22)
Sirur Shikshan Prasarak Mandal v. ACIT (2024) 208 ITD 739 (Pune) (Trib.)

S. 11 : Property held for charitable purposes-Delay in filing Form No 10B-COVID-19-Delay is condoned. [S. 119, Form. No 10B, 10BBA] 252
Assessee-trust filed return of income on 14-3-2022 and also furnished Form No. 10B. Assessing Officer denied exemption under section 11 holding that Form No. 10B/10BB was not filed in time. CIT(A) allowed the exemption. On appeal the Tribunal held that since up to March, 2022, country was passing through COVID-19 Pandemic and due dates for filing of return of income as well as compliance made by assessee also fells

during that period, in such circumstances, delay caused in filing of Form No. 10B was to be condoned and the order of CIT(A) allowing the claim is affirmed. (AY. 2021-22)
ITO v. P K Krishnan Educational Trust (2024) 207 ITD 7 (Mum) (Trib.)

253 **S. 11 : Property held for charitable purposes-Form No 10B-Audit report-Delay of 28 days-COVID-19-Delay is condoned-Exemption is allowed. [S. 119, Form No 10B]**
The assessee-trust was denied exemption under section 11 due to a delay in furnishing audit report in Form 10B along with return. CIT(A) affirmed the order of the AO. On appeal the Tribunal held that from March, 2020 to March, 2022, country was passing through Covid Pandemic which restricted normal activities and it was also an accepted fact that many changes had been brought into Act regarding procedure of filing of income-tax return as well as audit reports and certain technical glitches had been faced time and again. Considering those aspects, CBDT authorized condonation of delays up to 365 days for assessment year 2018-19 onwards and by Circular No. 16/2022 dated 19-07-2022 extended that to delays up to three years. Since delay was merely of 28 days, the delay is condoned and exemption under Section 11 allowed. (AY. 2020-21)
Kedar Nath Saraf Charity Trust v. DIT CPC (2024) 207 ITD 16 (Kol) (Trib.)

254 **S. 11 : Property held for charitable purposes-Profit motive-Business activity-Eligible to exemption-Depreciation-Allowable. [S. 2(15), 12A, 13, 32]**
Assessee-society which is registered under section 12A as a charitable society offering services to the nation as arm of Govt. of India under Software Technology Park of India (STPI) scheme. Assessing Officer held that assessee is indulged in business activities and treated all income except interest income as income from business and profession. Commissioner (Appeals) held that assessee is eligible for benefit of exemption under sections 11 to 13. On appeal the Tribunal held that assessee's own case for succeeding assessment year on identical issue Tribunal had held that assessee is a charitable society and income had to be computed in accordance with provisions of sections 11 to 13. Order of CIT(A) is affirmed. Claim of depreciation cannot be treated as double deduction. (AY. 2011-12)
Software Technology Parks of India v. DCIT (2024) 207 ITD 63 (Delhi) (Trib.)

255 **S. 11 : Property held for charitable purposes-Depreciation-Application of income-Application of income more than 85 percent of total income before depreciation-Matter remanded to the file of the Assessing Officer for deciding the issue in accordance with law. [S. 10(23C)(vi), 11(6),12A(a), 32]**
Assessee-trust claimed depreciation in its return of income and submitted that there was application of income of more than 85 per cent of total income. The AO disallowed depreciation, which was affirmed by the CIT(A). On appeal the assessee submitted that before depreciation, there would not be any tax liability, even if depreciation was inadvertently claimed in return. Tribunal held that looking into entire conspectus of section 11(6), it was necessary to set aside issue to file of Assessing Officer to look into application of income by assessee afresh. (AY. 2015-16)
Dharma Naidu Educational and Charitable Trust v. DCIT (2024) 207 ITD 419 (Chennai) (Trib.)

S. 11 : Property held for charitable purposes-Activities for upliftment of poor, providing training and skill development to poor in rural areas-Denial of exemption is not justified. [S. 2(15)] 256

Assessee-trust is engaged in activities for upliftment of poor, providing training and skill development of poor in rural areas in backward districts of States. Assessee had been allowed benefit of exemption under section 11 continuously up to assessment year 2010-11. The Assessing Officer denied exemption to assessee by invoking proviso to section 2(15). CIT(A) allowed the exemption. On appeal the Tribunal held that the Assessing Officer had not brought on record any evidences which would suggest that activities of assessee had been carried out with profit motive and thus, mischief of proviso of section 2(15) was not attracted in case of assessee. Order of CIT(A) is affirmed. (AY. 2015-16 to 2017-18)

ITO v. Professional Assistance for Development Action (2024) 207 ITD 446 (Delhi) (Trib.)

S. 11 : Property held for charitable purposes-Specified persons –Adequate consideration-Rental value adopted by Assessing Officer was less than 10 per cent rent received by assessee-Denial of exemption is not justified. [S. 12, 12A(a), 13(2)(b), 13(3)] 257

Assessee filed return of income disclosing nil income on account of it being registered as a company under section 25 of Companies Act, 1956 as also registered under section 12A(a). Assessing Officer held that assessee had made available building owned by it to persons referred to in section 13(3) without charging adequate rent or compensation and had violated provisions of section 13(2)(a) and 13(2)(b) read with section 13(3). Accordingly, he assessed total income of assessee at certain amount by denying claim for application of income and exemption under section 11 on account of infringement of section 13(2)(b) read with section 13(3). On appeal, Commissioner (Appeals) held that difference between rental value adopted by Assessing Officer and rental value adopted by assessee being less than 10 per cent, rent received by assessee could not be said to be not adequate hence allowed benefits of exemption under sections 11 and 12 to assessee. On appeal the Tribunal held that on facts order of Commissioner (Appeals) is affirmed. Followed *CIT(E) v. Hamdard National Foundation (India) (2022) 286 Taxman 441/ 443 ITR 348 (Delhi)(HC)* (AY. 2007-08)

DCIT v. Indian Grameen Services. (2024) 207 ITD 609 (Delhi) (Trib.)

S. 11 : Property held for charitable purposes-Promotion of education, culture and philosophy-Return filed in wrong form-Filed return in Form 5 claiming loss which is meant for business income-The Assessing Officer is directed to consider return as a rectification petition. [S. 12AA, 139(4A), 139(9), 139C, 143(1), 154, Form No 5, Form No 7] 258

Assessee, a charitable trust, filed its return claiming loss for relevant years. Return is processed under section 143(1) disallowing application of income under section 11(1)(a). Assessee did not act thereon and filed appeal before Commissioner (Appeals) with a delay of 3 years 2 months and 2 years and 2 months for two years respectively. CIT(A) dismissed the appeal as not maintainable on finding of gross negligence. On appeal the Tribunal held that since assessee-trust filed its return in Form 5, which was meant for business income, processing of returns denying exemption under section 11(1)(a) was a mistake apparent from record and Commissioner (Appeals) should have directed

Assessing Officer to consider assessee's returns of income as rectification petitions. Matter remanded. (AY. 2014-15, 2015-16)
Kathikode Charitable Trust v. ITO (2024) 207 ITD 588 (Cochin) (Trib.)

259 **S. 11 : Property held for charitable purposes-Rent receipt-Receipt from rent by assessee-society was in course of actual carrying out of objects of general public utility and same was below 20 per cent of total receipt-Commissioner (Appeals) is justified in allowing benefit under sections 11 and 12-Corpus donation-Donation received by assessee-society were with specific direction and also utilized for construction of fixed assets i. e. bhawans only, same was corpus donation exempted under section 11(1)(d) [S. 2(15), 11(1)(d), 12A]**

Assessee-society, registered under section 12A, which is engaged in arrangement, management and enhancement of immovable property in order to earn rent, to earn profit after sale, to earn donation etc. -It had claimed exemption under section 11 in respect of its rental income. Assessing Officer, rejected assessee's claim of exemption under section 11 holding that assessee-society was advancing object of general public utility and rent receipt from such activity was more than prescribed limit of Rs. 25 lakhs, therefore, activities of assessee were not for charitable purpose. Commissioner (Appeals) allowed the benefit of exemption under sections 11 and 12 to assessee. On appeal the Tribunal held that there was no material brought on record to support the fact that assessee was acting with profit motive so far in activities carried out. Receipt that assessee received was invested or expended for object of society and Assessing Officer failed to bring on record as to why rental income was treated as commercial income. Since receipt from rent was in course of actual carrying out of objects of general public utility and same was below 20 per cent, Commissioner (Appeals) is justified in allowing benefit under sections 11 and 12 to assessee. Tribunal also held that since copies of receipts contained direction of donor that money were for construction of fixed assets i. e. bhawans only and assessee had done that activity, Commissioner (Appeals) was justified in allowing benefit of section 11 to assessee. (AY. 2016-17)
ACIT v. Shree Maheshwari Samaj (2024) 207 ITD 701/232 TTJ 17(UO) (Jodhpur) (Trib.)

260 **S. 11 : Property held for charitable purposes-Grants received from Government-Spent 85 percent of such income-Balance income is exempt under section 11 of the Act. [S. 11(5), 13(1)(d)]**

Assessee is a Board established by Central Government to act as a nodal agency in developing activities of fisheries among various states in the country. Major source of receipt was grants from Central Government, and outflow was utilization of grants for projects developed by respective State Governments which were supervised by assessee. Assessee based on stage of completion of project released grants to State Government. Assessing Officer, held that the assessee did not utilise 85 per cent total grants-in-aid received during year and funds received back as refunds from various projects during year. He was of view that assessee had invested in equity shares of SDMSSL and thereby had contravened provisions of section 13(1)(d) read with section 11(5). Accordingly, he taxed shortfall in application of income below 85 per cent of total income of trust. Commissioner (Appeals),held that on an incorrect appreciation of accounting policies followed by assessee, Assessing Officer had rejected books, without actually bringing

on record any defect in audited accounts of assessee and, therefore, he allowed claim of exemption under section 11. It was observed that assessee had maintained books of account, bills, vouchers and all other requisite supporting documents in respect of grants received, spent and other activities. Such books were audited by independent auditors-Assessee had been following accounting procedure as defined in GFR 230(5) of Government of India and directions of Integrated Financial Division of Ministry of Agriculture, Government of India (IFD) over years and treating all grants as liabilities and only when grants were utilised by implementing agencies they were treated as income and when utilisation certificates were received, they were treated as expenditure irrespective of year in which grant was received, as per directions of Government of India. There was no income element on grant of funds by Central Government, nor any expenditure incurred merely by allocation. Assessee had spent 85 per cent of income for objectives. Further, such an investment was made in SDMSSL, in financial year 2008-09 and not during current year and never in earlier years any objection on that aspect was taken. Order of CIT(A) is affirmed. (AY. 2015-16)
DCIT v. National Fisheries Development Board. (2024) 206 ITD 20 (Hyd) (Trib.)

S. 11 : Property held for charitable purposes-Gross receipt is more than Rs. 10 lakhs-Primary purpose of an institution is advancement of objects of general public utility-Charitable trust would remain charitable even if an incidental or ancillary activity or purpose for achieving main purpose, is profitable in nature. [S. 2(15), 12A] 261
Assessee is a registered under section 12A and had derived income by way of contributions from the head office, membership fee, income from publication of Indian Foundry journal, other grants and donations etc. besides receiving interest on fixed deposits. It had claimed exemption under section 11. Assessing Officer, rejected claim of exemption on ground that assessee-society was advancing object of general public utility and gross receipt of assessee from such activity was more than Rs. 10 lakhs in previous year and, therefore, activities of assessee were not for charitable purpose. CIT(A) affirmed the order of the Assessing Officer. On appeal the Tribunal held that on similar issue in case of Indian Chamber of Commerce v. Dy. CIT [IT Appeal Nos. 933 & 934 (Kol.) of 2023, dated 22-12-2023] had held that if primary purpose of an institution was advancement of objects of general public utility, it would remain charitable even if an incidental or ancillary activity or purpose for achieving main purpose, is profitable in nature. Since profit derived from services rendered as public utility service was very meagre, Assessing Officer is directed to allow exemption under section 11. (AY. 2014-15)
Institute of Indian Foundrymen v. ITO (2024) 206 ITD 203 (Kol) (Trib.)

S. 11 : Property held for charitable purposes-Advertisement expenses –Specified person-Red Eye Media Pvt Ltd-Billed same amount as news paper company billed-Justified in deleting-Brokerage and commission-Matter is restored to Assessing Officer for re-adjudication-Depreciation-Position prior to 1-4-2015-Entitled to claim depreciation under section 32 on assets whose cost had been allowed as application for charitable purposes under section 11(1)(a). [S. 11(6), 11(1)(a), 12A, 13(3), 32] 262
Assessee, a charitable institute, had incurred advertisement expenses pertaining to advertisement work that which handled by Red Eye Media Pvt Ltd (REM)) a related party and a specified person, falling within the meaning of section 13(3). Assessing

Officer held that REM was charging substantially higher amounts on every bill, disallowed 15 per cent of total amount of advertisement expenses paid by assessee-society to REM. CIT(A) deleted the addition. On appeal the Tribunal held that REM being agent of newspaper company received a discount of 15 per cent from newspaper company on bill amount. Further, REM had charged assessee-society for advertisements in newspaper, same rates which were fixed by newspaper company. Since discount of 15 per cent was received by REM from newspaper company on bill amount in its capacity as that of an agent of newspaper company, same, could not have any bearing on determining reasonableness of charges that were borne by assessee-society for advertisements in newspapers carried out through aforesaid specified person. Since REM had not availed any profit from assessee-society, Commissioner (Appeals) is justified in deleting addition made by Assessing Officer on account of excess payment made to REM. As regards addition on account of brokerage and commission expenses incurred by assessee without giving any cogent reason and without examining documentary evidence supporting assessee's claim of aforesaid expenditure, matter is restored to Assessing Officer for re-adjudication. Held that prior to section 11(6) made available on statute with effect from assessment year 2015-16, assessee was entitled to claim depreciation under section 32 on assets whose cost had been allowed as application for charitable purposes under section 11(1)(a). (AY. 2013-14 to 2015-16)

ACIT v. Institute for Technology & Management University. (2024) 206 ITD 510/115 ITR 362 (Raipur) (Trib.)

263 **S. 11 : Property held for charitable purposes-Return filed u/s 139(1) and Form No 10 is also filed manually-Delay in filing Electronically filing Form No 10-Rectification should have been done and delay if any may be condoned. [S. 11(2), 139(1), 143(1), 154, Form No 10]**

Assessee-trust maintained separate accounts for various donations, including corpus donations, which were earmarked for specific purposes and utilized accordingly. Assessing Officer added back a sum of Rs. 14 lakhs to disclosed income of assessee, citing non-compliance with provisions of section 11(2) due to late filing of Form No. 10. The assessee filed appeal against intimation and also rejection of application under section 154 of the Act. On appeal the Tribunal held that statutory provisions requiring filing of Form No. 10 online along with return of income came into effect from assessment year 2016-17. Since return of income was filed within time provided under section 139(1) and Form No. 10 was also filed manually before filing of return before Territorial Jurisdictional Assessing Officer, delay caused in electronically filing Form-10 for rectification, should have been condoned. Therefore, assessee was directed to upload form electronically within 30 days from receipt of order. (AY. 2016-17)

Bhidbhanjan Parshwnath Jain Derasar v. DCIT (2024) 206 ITD 615 (Jodhpur) (Trib.)

264 **S. 11 : Property held for charitable purposes-Surveys and research into readership of various media-Receipts crossed limit of Rs 10 lakhs-Activities of publishing could be characterized as in nature of trade, commerce or business for consideration-Matter remanded. [S. 2(15), 12A]**

Assessee is a company, registered under section 12A, was primarily engaged in conducting surveys/research into readership, viewership and listenership of various

media and dissemination of research to various members and non-members who were basically industrial business entities. Assessee outsourced research to outside agencies who prepared Indian Readership Survey (IRS) reports which were sold to subscribers/ members (more than 165) and to non-members. The Assessing Officer denied the exemption on the ground that since assessee's receipts from its activity even though it was for general public utility exceeded threshold limit of Rs. 10 lakhs, therefore, it is not entitled for exemption under section 11. CIT(A) affirmed the order of the Assessing Officer. On appeal the Tribunal held that it had to be examined that main activity for which section 12A registration was obtained itself falls within category of carrying of any activity in nature of trade, commerce or business. Only if it carries out any other activity which falls in such nature, then only proviso to section 2(15) would be applicable. Lower authorities did not examine the same and merely rejected claim under section 11 as receipts exceeded Rs. 10 lakhs. Therefore, matter remanded back to revenue to decide whether nature of receipts of income garnered by assessee in course of carrying out these activities of publishing newspaper could be characterized as in nature of trade, commerce or business for consideration. (AY. 2009-10 to 2013-14)
Media Research Users Council v. ADIT (2024) 205 ITD 170 /114 ITR 160 (Mum) (Trib.)

S. 11 : Property held for charitable purposes-Audit report in Form No 10B was filed after expiry of time allowed under section 139(1)-Not filed any application for condonation of delay-Denial of exemption is justified. [S. 12A, 13(2(c), 13(3), 139(1), Form No 1OB] 265

Assessee-society registered under section 12A filed return of income for relevant assessment year within due date specified under section 139(1) declaring nil income after claiming exemption under section 11. Assessing Officer declined claim for exemption for reason that assessee had filed audit report in Form No. 10B after expiry of time allowed under section 139(1). CIT(A) up held the order of the Assessing Officer. On appeal the Tribunal held that since assessee did not cumulatively satisfy set of conditions specified in Para 4(i) of Circular No. 10, dated 22-5-2019 and also had not filed any application for condonation of delay under section 119(2)(b) as provided in Para (ii) of said Circular, there remained no occasion for condonation of delay involved in filing Form No. 10B beyond stipulated time period. Accordingly the lower authorities had rightly declined claim for exemption under section 11. As regards salary paid to a doctor (trustee of assessee-society) and Assessing Officer disallowed claim on ground that assessee had failed to substantiate its claim and added amount to its income by invoking provisions of section 13(2)(c) read with section 13(3), since Assessing Officer in immediately preceding assessment year had accepted assessee's claim for deduction of salary paid to aforesaid doctor, matter is restored to him to verify authenticity of assessee's claim. (AY. 2016-17)
Dr. Murli Manohar Dubey Charitable Society v. ITO (2024) 205 ITD 388/230 TTJ 664 (SMC) (Raipur) (Trib.)

S. 11 : Property held for charitable purposes-Dividend received on the shares which were received as donation towards corpus fund-Treated as part of corpus fund-Cannot be treated as income from other sources-Entitled to exemption. [S. 11(1)(d),11(5), 13(1)(d)] 266

The issue in dispute is whether the dividend received on the shares, which were received by the assessee as donation towards corpus fund, could also be treated as part

of corpus fund or to be treated as income of the assessee which was to be applied or invested as per the provisions of section 11 of the Act. The assessee received 5,00,000 equity shares of Majesco Ltd. as corpus donation. The donor vide its letter dated 17. 12. 2020 directed the assessee that said shares, any receipt thereof in the form of dividend/ sale proceeds and receipts on securities /deposits made out of dividend/sale proceeds was to be treated as corpus donation. According to the assessee the dividend received and interest received on deposit made out such dividend was to be treated as corpus donation, which was claimed exempt u/s 11(1)(d) of the Act while filing the return of income. According to the Assessing Officer, once the asset is donated and transferred, generation of future income from asset will be governed as per the provisions of the Act only, and not under any conditions set by the donor. According to the Assessing Officer, the entire interpretation of section 11(1)(d) of the Act was done wrongly by the assessee and claimed the dividend as exempt under the corpus fund and therefore, he assessed income from dividend as income from other sources. CIT(A) deleted the addition. On appeal by the Revenue the assessee contended that the dividend received and interest received on deposit made out such dividend was to be treated as corpus donation, which was claimed exempt u/s 11(1)(d) of the Act. The Tribunal affirmed the order of the CIT(A), relied on *CIT(E) v. Mata Amrithanandamayi Math [2017] 85 taxmann.com 261 (Ker)(HC)* affirmed by Honourable Supreme Court. (ITA No. 4766/MUM/2023 dt. 30-5-2024)(AY. 2021-22)
ITO v. Bhavitha Foundation (Mum)(Trib). www.itatonline.org.

267 **S. 11: Property held for charitable purposes-Income from property –Revising the claim with higher deduction-Not filed the return and Form No 10 within due date prescribed under section 139(1) of the Act-Not justified in not allowing the deduction for amount accumulated under section 11. [S. 11(2), 139(1), 143(1), Form No. 10]**
AO passed order u/s 143(1) whereby exemption u/s 11(2) was restricted as per original return on the ground that assessee had not filed ITR and form no. 10 within due date prescribed u/s 139(1). On appeal the CIT(A) allowed the deduction. Tribunal affirmed the order of the CIT(A) holding that the Assessing Officer was not justified in not allowing the deduction for amount accumulated under section 11. (AY. 2019-20)
ITO (E) v. Ramji Mandir Religious and Charitable Trust [2024] 205 ITD 150 (Ahd) (Trib)

268 **S. 11 : Property held for charitable purposes-Accumulation of income-Condonation of delay-Pending for consideration-The Assessing Officer is directed to take a decision in matter after outcome of condonation petition filed by assessee. [S. 11(2) 13(9), 139, Form No 10B]**
Assessee-trust filed Form 10 beyond due date and had sought accumulation of income under section 11(2) which was in contravention of section 13(9). Assessing Officer disallowed benefit of accumulation and made addition to income of assessee-trust. CIT(A) affirmed the order of the Assessing Officer. On appeal the Tribunal held that the assessee submitted that there was a delay in filing return of income and assessee had filed application for condonation, which was pending consideration. Matter is restored to file of Assessing Officer and he was to be directed to take a decision in accordance

with law after assessee's application for condonation of delay in filing return of income had been disposed off by relevant authority. (AY. 2017-18)
Lord Venkateshwara Ladies Educational and Welfare Trust v. ITO (2024) 204 ITD 668 (Bang) (Trib.)

S. 11 : Property held for charitable purposes-Application of income-Expenses incurred on the repairs or renovation of its assets used for charitable purposes are also considered as income application towards the charitable aims. [S. 11(1)(a), 12A] 269
The appellant-society, a charitable trust registered under section 12A of the Act, runs a school in a building owned by another trust. The appellant-society incurred expenditure on repairs/renovation of the school building and certain amount towards payment of property taxes. The AO disallowed the expenditure and the property tax on the ground that the building does not belong to the appellant-society. The CIT(A) upheld the disallowance on the ground that the appellant-society did not provide any agreement or MOU with the owner of the building regarding the maintenance of the building.
The Tribunal allowed the appeal of the appellant-society and set aside the impugned order of the CIT(A). The Tribunal held that the expenditure incurred by the appellant-society on the repairs of the school building and the property tax paid was for the purpose of carrying out the objects of the charitable trust, which is to impart education to the poor and needy children. The Tribunal relied on the decisions of the Gujarat High Court in *Satya Vijay Patel Hindu Dharmashala Trust v. CIT [1972] 86 ITR 683 (Gujarat)* and the Supreme Court in *S. R. M. CT. M Triuppani Trust v. CIT [1998] 230 ITR 636 (SC)*, which held that the purchase or construction of a capital asset for the charitable purpose is also an application of income for the charitable purpose under section 11(1)(a) of the Act. (AY. 2016-17)
Bombay Society of the Salesian Sister India v. ITO [2024] 109 ITR 44 (SN) (Mum)(Trib)

S. 12A : Registration –Trust or institution-Form No 10AB could not be up loaded due technical glitches-Commissioner is directed to accept Form No. 10AB in physical mode treating same as filed prior to last date of submission-Decide it on its own merits, considering period of delay and reasons for delay. [Form No. 10AB, Art. 226] 270
The assessee could not submit application Form No. 10 AB, due to some technical glitches he could not succeed in submitting his application form through online mode. On a writ, the petitioner prayed that only to the extent of submission of his application Form No. 10 AB, in view of the circular dated 17-7-2022, the purpose would be sub served if the Commissioner is directed to accept the application Form No. 10 AB of the assessee in physical mode treating the same is filed prior to the last date of submission of the application i. e. 30-6-2024 and to decide it on its own merits, considering the period of delay and reasons for delay, as the same has been explained by the assessee that due to technical glitches he could not succeed in filing the application form. Court held that although the Commissioner (E) has not been made a party respondent in the case, yet in the interest of justice, the assessee is directed to submit his application Form No. 10-AB in physical mode to the Competent Authority/Commissioner (E) Bhopal along with an application as well as necessary documents under the circular dated 17-7-2022 within 3 weeks from today, then the Commissioner (E) is directed to consider

the application of the assessee treating it as filed before the last date of submission of application form i. e. 30-6-2024, and decide the application on its own merits in accordance with law, and circular dated 17-7-2022. (AY. 2022-23) (SJ)
Vaishya Welfare Gaushala and Naturopathy Shiksha Society v. UOI (2024) 301 Taxman 496 (Chhattisgarh)(HC)

271 **S. 12A : Registration-Trust or institution-Application for registration erroneously made while charitable institution continued to be registered-Assessee is permitted to withdraw application filed inadvertently-Interpretation-Precedent-Doctrine of merger-Difference between decision of Supreme Court rejecting appeal by Special Leave and decision decided on appeal. [S. 12AA, 12AB, Art. 141, 226]**
The assessee is a trust engaged in educational activities and was granted registration under section 12A of the Income-tax Act, 1961. The assessee stated that it could not trace the certificate and although it availed of the benefits for certain number of years without any objection from the Department, the authorities called upon the assessee to produce the registration certificate. Hence, the assessee made an application on October 14, 2019 to obtain a duplicate certificate of registration under section 12A but was not responded. The assessee made a fresh application on April 19, 2022. The assessee contended that both the applications were not decided and the duplicate certificate was also not issued. On March 25, 2022, the assessee applied for a fresh provisional certificate under section 12A(1)(ac)(i) in the prescribed form 10A as per rule 17A of the Income-tax Rules, 1962, that although the application for provisional registration was made on April 4, 2022, an order on form 10AC under section 12A(1)(ac)(i) for the assessment years 2022-23 to 2026-27 was passed by the competent authority thereby granting registration to the assessee. Thereafter, the assessee inadvertently applied for registration under the same provision in form 10AB on September 30, 2022. The Commissioner (E) issued notices requiring the assessee to submit copy of the provisional registration granted under section 12AB and the assessee furnished the necessary details. Another notice was received by the assessee on March 9, 2023 to which the assessee failed to submit a reply. On March 31, 2023, the Commissioner (E) passed an order rejecting the assessee's mistaken application on the ground that the assessee did not possess a copy of the provisional registration granted under section 12AB. On a writ petition contending that the Commissioner (E) might take further actions to cancel the registration dated April 4, 2022, of the assessee and seeking to be fully protected under the decision of the Supreme Court in CIT v. Society For The Promotion of Education(2016) 382 ITR 6 (SC) and to permit withdrawal of the application inadvertently filed under section 12A(1)(ac)(i). Court held that the assessee having already been granted registration under section 12A(1)(ac)(ii) read with section 12AB(1)(a) of the 1961 Act on April 1, 2022, for a period of five years, i. e., from the assessment years 2022-23 to 2026-27, there was no need to make a fresh application on September 30, 2022 under which the order rejecting the application for registration had been passed. Hence the assessee could withdraw its application filed under section 12A(1)(ac)(i), dated September 30, 2022 rendering the order dated March 31, 2023 of no consequence. Honourable Court also explained the difference between decision of Supreme Court rejecting appeal by Special Leave and decision decided on appeal.

Referred, *Kunhayammed v. State of Kerala (2000) 245 ITR 360(SC)/(2000) 119 STC 505 (SC)/ (2000) 6 SCC 359, Khoday Distilleries (Now known as Khody India Ltd v. Sri Mahadeshwara Sahakara Sakkare Karkhane Ltd, Kollegal (Under Liquidation) represented by the Liquidator (2019) 4 SCC 376/ 2019 SCC 505 (SC)* (AY. 2022-23 to 2026-27)
Purandhar Technical Education Society v. CIT (E) (2024)468 ITR 711 / 166 taxmann.com 129/243 DTR 97 / (2025) 343 CTR 282 (Bom)(HC)

S. 12A : Registration-Trust or institution-Method and manner of service of notice under statutory provisions-Notice and reminders issued by CIT(E) were reflected only on portal and not sent to the assessee at its registered email address-Order passed was set aside holding that before any action is taken, a communication of notice must be in terms of provisions of section 282 and rules made thereunder [S. 12A(1)(ac)(ii), 282, Rule 127, Art. 226] 272

The CIT(E) issued notice u/s. 12A(1)(ac)(ii) and subsequent reminders which were reflected only on the portal instead of sending the same on the assessee's email address. The assessee challenged the same as it was not provided sufficient opportunity. Revenue contended that as the assessee had submitted his form himself on the said e-portal, a presumption can be drawn that he was having knowledge of the notice/reminders which were placed on the e-portal as there was no requirement of submitting notice personally through e-mail or otherwise. However, High Court rejected the contentions of the Revenue and held that an individual or a Company is not expected to keep the e-portal of the Department open all the time so as to have knowledge of what the Department is supposed to be doing with regard to the submissions of forms etc.. The principles of natural justice are inherent in the income tax provisions and the same are required to be necessarily followed. Hence, the notices and order passed were set aside with the direction that the Department would provide an opportunity of hearing to the petitioner and they will also allow the petitioner to appear personally for the purpose and pass a speaking order independent of the order passed earlier by them.
Munjal BCU Centre of Innovation and Entrepreneurship v. CIT (E) [2024] 463 ITR 560 / 160 taxmann.com 629 /338 CTR 479 (P&H) (HC)

S. 12A : Registration-Trust or institution-Lease transactions-Business income-Lease agreement for 50 Years-Violation of Maharashtra Stamp Act, 1958 and Maharashtra Public Trust Act, 1950-Denial of registration is affirmed. [S. 12AA(1), Maharashtra Public Trust Act, 1950, S. 36(IA), Maharashtra Stamp Act, 1958, Registration Act, 1908,S. 17] 273

The CIT(E) has not granted the registration on the ground that lease agreement was entered in to by violating the conditions of Maharashtra Stamp Act, 1958 and Maharashtra Public Trust Act, 1950. On appeal the Tribunal held that the lease agreement was not registered as per the provisions of section 17 of the Registration Act,1908, violated the provisions of Maharashtra Stamp Act, 1958 as no stamp duty was paid. The Tribunal also held that the assessee has not obtained permission of the Charity Commissioner as per section 36(IA) of the Act. The Tribunal also held that the assessee has earned lease income which is not incidental to the object of the Trust. Order of CIT(E) is affirmed. Relied on *Commissioner of Customs v. Dilip Kumar*

& Co(2018) 95 taxmann.com 327 / 69 GST 239 (SC) (dt. 30-7-2018, Bihari Lal Jaiwar & Ors v. CIT (1996) 217 ITR 746 (SC)
Golden Charitable Trust v. CIT(E) (2024) Chamber's Journal-June-Pg. 115 (Pune) (Trib)

274 **S. 12A : Registration-Trust or institution--Service of show cause notice under S. 12A(1)(ac)(iii) by putting on e-portal only-Notice not served on the registered email id of the assessee as per the provisions of S. 282 of the Act-Rejecting of application is not valid-Application filed in Form No 10B cannot be sustained-Application is restored back to CIT(E) to decide on merits. [S. 12A(1)(ac)(iii), 282, Form No 10AB]**

Assessee filed an application for registration under s. 12A(1)(ac)(iii) in Form No. 10AB before the CIT(E). Notices were issued by the CIT(E) on the online portal, which were not served on the registered email id of the assessee as per the provisions of S. 282. CIT(E) rejected the application. On appeal the Tribunal held that before any action is taken, a communication of the notice must be made in terms of the provisions of law. The assessee cannot be faulted for not responding to the queries raised by the CIT (E). The order passed by the CIT(E) rejecting the application filed in Form No. 10AB due to non-compliance of the notices cannot be sustained. Accordingly, the application is restored back to the CIT(E) with a direction to send notices to the correct registered email id of the assessee and pass order after giving proper opportunity to the assessee as per law. *Manjal BCU Centre of Innovation & Entrepreneurship v. CIT (E) (2024) 338 CTR 479 / 236 DTR 471 (P&H) (HC)*
Shamshan Sewa Samiti v. CIT (2024) 220 TTJ 113 (UO) (Amritsar) (Trib)
Shri Shri Maa Sundeshan Ji Mahraj Shri Hari Darbar Society v. CIT (2024) 220 TTJ 113 (UO) (Amritsar) (Trib)

275 **S. 12A : Registration-Trust or institution-Assessment proceedings-Pendency of application for registration-Registration is granted-Denial of exemption on ground registration granted was prospective and not applicable for Assessment year in question is not proper-Only the profit can be taxed and not the entire receipt if benefit of section 11 is to be denied-Adjustment under section 143(1) is bad in law. [S. 11, 12A(2), 12AA, 143(1)]**

Held that according to section 12A(2) of the Act, if any assessment proceeding was pending during the pendency of registration under section 12AA of the Act, then the registration granted shall be applicable to the pending assessment proceedings. The Central Board of Direct Taxes Circular No. 1 of 2015(2015) 371 ITR 22 (St) explained section 12A(2) of the Act. The proviso to section 12A(2) was introduced to remove hardship caused to genuine trusts. It had not been alleged by the Department that the assessee's activities or objects were not charitable in nature, rather it was an admitted fact that the assessee's objects and activities were charitable in nature. The Commissioner (Exemptions) after examining the objects and activities of the assessee-trust, had granted registration under section 12AA of the Act to the assessee-trust. The order under section 143(1) was issued on January 2, 2018 and registration under section 12AA of the Act was granted on October 20, 2016, which meant that at the time of issue of the order under section 143(1), the assessee already had registration under section 12AA of the Act. Therefore, in terms of the proviso to section 12A(2) of the Act, the

assessee is eligible for deduction under section 11 of the Act for the assessment year 2016-17 as it had received registration under section 12AA of the Act before the order under section 143(1) for the assessment year 2016-17 was passed. Tribunal also held that only the profit can be taxed and not the entire receipt if benefit of section 11 is to be denied. Therefore, the CPC has erred in taxing entire receipt of the assessee under section 143(1) of the Act. (AY. 2016-17)
Indian Medical Association v. Jt. CIT (Appeals) (2024)113 ITR 60 (SN)(Pune)(Trib)

S. 12A : Registration-Trust or institution-Donations to charitable institutions-Purchase of land and financial assistance to improve healthcare education and services and to uplift standard of living of Tribals-Order of rejection is set aside-Matter remanded to the CIT(E) to decide a fresh in accordance with law. [S. 12A(1)(ac)(ii), 80G(5)] 276
Held that the letter dated September 21, 2023 showed purchase of land and letter dated July 17, 2023 mentioned that the trust had given financial assistance or donation to improve the healthcare education and services and to uplift the standard of living of Tribal. The Commissioner is bound to consider whether the objects of the trust were genuinely charitable in nature and whether the activities which the trust proposed to carry on were genuine in the sense that they were in line with the objects of the trust. The Commissioner (E) is directed to consider the issue afresh exercising powers in accordance with law. (AY. 2023-24)
Karamshi Jethabhai Somaiya (Delhi) Trust v. CIT (E) (2024)113 ITR 79 (SN)(Delhi)(Trib)

S. 12A : Registration-Trust or institution-Denial of exemption-Trust or institution-Investment restrictions-Trust was established much prior to commencement of Income-tax Act, 1961-Embargo of section 13(1)(b) is not applicable-Denial of registration is not valid. [S. 12AB, 13(1)(b)] 277
Assessee-trust was established in 1953 It applied for registration under section 12A/12AB. Commissioner (E) rejected the application on ground that objects of assessee were restricted to a particular community and, thus, assessee-trust is established for benefit of a particular community and not for general public, and accordingly, provisions of section 13(1)(b) were applicable. On appeal the Tribunal held that since the assessee trust was established much prior to commencement of Income-tax Act, 1961, embargo of section 13(1)(b) would not apply and, therefore, matter is remanded back to Commissioner (E) to reconsider application of assessee on merit.
Bai Navazbai Faramroze D Mehta Charity Blocks v. CIT (2024) 209 ITD 213 (Surat) (Trib.)

S. 12A : Registration-Trust or institution-Grant of registration under section 12A cannot be denied by invoking provisions of section 13(1)(b). [S. 12A(1)(ac)(iii), 13(1)(b), Form No. 10AB] 278
Assessee-trust filed an application for registration under section 12A(1)(ac)(iii) in Form No. 10AB. Commissioner (E) held that since the trust deed explicitly stated that organization would focus on aiding Jain Community and further specifying that membership was restricted to individuals from Shri Shwetamber Murtipujak Tapegachcha Jain Samaj section 13(1)(b) applied to instant case and rejected application for registration. On appeal the Tribunal held that grant of registration under section 12A

could not be denied by invoking provisions of section 13(1)(b) at the time of grant of registration. Matter restored to file of Commissioner (E) for de novo consideration.
Shree Naminath Shwetamber Murtipujak Tapagachh Jain Religious Trust v. CIT (2024) 209 ITD 379 (Ahd) (Trib.)

279 **S. 12A : Registration-Trust or institution-Details by questionnaire communicated through Electronic mode on Department's Portal--Merely uploading of information about date of hearing on Income-Tax Portal is not effective service of notice-Notice is not served-Matter restored to Commissioner (E) to decide afresh in accordance with law after giving reasonable opportunity of being heard to assessee. [S. 12A(1)(1)(ac)(iii), 12AB, 282(1), R. 127(1)]**
Held that merely uploading of information about the date of hearing on the Income-tax portal was not an effective service of notice in terms of the provisions of section 282 of the Act. The notices were uploaded on the e-portal of the assessee but the assessee stated that he did not receive any notice of hearing. Further, there was nothing on record to prove that the assessee had been served proper notice of hearing to furnish the relevant information or documents. Therefore, the issue was restored to the Commissioner (E) to decide afresh in accordance with law after giving reasonable opportunity of being heard to the assessee and the assessee shall co-operate in the fresh proceedings before the Commissioner (E). (AY. 2021-22, 2024-25)
Idream Social Edtech Foundation v. CIT (E) (2024)112 ITR 20(Chd)(Trib)

280 **S. 12A : Registration-Trust or institution-Running Educational Institution-Denial of registration-Making profits-Matter restored to Commissioner for consideration of assessee's application for registration de novo on merits-Delay condoned. [S. 80G, 254(1)]**
That considering the model of education, being residential boarding and hostel facility, followed by the assessee, on the same facts the assessee had been granted provisional registration from the assessment years 2022-23 to 2024-25. The matter is restored to the file of the Commissioner for consideration of the assessee's claim for registration under section 12A of the Act, de novo on the merits after giving the assessee due opportunity of hearing. Matter remanded. (AY. 2013-14)
Tapovan Education Trust v. CIT (2024)112 ITR 43 (SN)(Ahd)(Trib)

281 **S. 12A : Registration –Trust or institution-Denial of exemption-Trust or institution-Investment restriction -Provisions of section 13 can be invoked only at time of assessment and not at time of grant of registration under section 12A-. Matter is restored to file of CIT (E), for de-novo consideration. [S. 13(1)(b)]**
Assessee-trust filed an application for grant of final registration under section 12A. Commissioner (E) held that objects of trust appeared to be restricted to benefit of a particular religious community or caste, which was Khoja Shia Ishna Ashari Samaj and thus, section 13(1)(b) would be applicable and dismissed application for grant of final registration. On appeal the Tribunal held that provisions of section 13 can be invoked only at time of assessment and not at time of grant of registration under section 12A. Matter is restored to file of CIT (E), for de-novo consideration.
Bargahe Husaini Trust-Monpar v. CIT (2024) 208 ITD 158 (Ahd) (Trib.)

S. 12A : Registration-Trust or institution-Failure to comply with show cause notice –Cancellation of provisional registration-Matter remanded to Commissioner (E). [S. 12AB] 282

Assessee Institute failed to comply with show cause notice (SCN), Commissioner (E) rejected assessee's application for grant of registration/approval and also cancelled provisional registration/approval granted under section 12AB of the Act. On appeal the Tribunal held that the assessee Institute had requested for adjournment due to non-availability of its authorized representative but there was no whisper of same in order passed by Commissioner (E); however, uploading of adjournment request on e-portal was duly acknowledged by e-filing team. Since assessee institute had remained divested of sufficient opportunity to put forth its case and furnish requisite details in course of proceedings before Commissioner (E), matter required to be revisited by Commissioner (E).

Institute of Driving and Traffic Research v. CIT (2024) 208 ITD 671 /[2025] 121 ITR 368 (Raipur) (Trib)

S. 12A : Registration-Trust or institution-Denial of registration-Application rejected application on ground that no charitable activity was initiated and no expenses were incurred on any charitable activity as detailed in section 2(15)-Assessee submitted documents to show that it had given financial assistance/donation to improve healthcare, education and services and to uplift standard of living of Tribals-Matter is remanded back for fresh consideration. [S. 2(15), 12A(1)(ac)(iii), 80G (5)] 283

Assessee-trust filed an application for registration under section 12A(1)(ac)(iii) and under section 80G(5). Commissioner(E) rejected said application on ground that no charitable activity was initiated and no expenses were incurred on any charitable activity as detailed in section 2(15). Tribunal held that documents to show that it had given financial assistance/donation to improve healthcare education and services and to uplift standard of living of Tribals. On facts, order of CIT(E) is set aside and matter is remanded back for fresh consideration. (AY. 2023-24)

Karamshi Jethabhai Somaiya (Delhi) Trust v. CIT (2024) 207 ITD 564 (Delhi) (Trib.)

S. 12A : Registration –Trust or institution-Granted registration under section 12AB for five years-There was no bar in moving application at earliest possible event, matter is restored to Commissioner (E) to consider application of assessee for final registration and grant same, if same was otherwise so admissible to assessee. [S. 12AB, 80G(5), Form No. 10AC] 284

Assessee-trust had been granted provisional registration in Form 10AC for five years. After grant of provisional registration, assessee applied for final registration-Commissioner (E) rejected application of assessee being premature and not maintainable. On appeal the Tribunal held that where trust or institution was provisionally registered under section 12AB, application for final registration could be made at least six months prior to expiry of period of provisional registration or within six months of commencement of its activity, whichever was earlier. There was no bar in moving application at earliest possible event. Order of Commissioner (E)is set aside and matter is restored to Commissioner (E) to consider the application of assessee for final

registration and grant same, Matter remanded. Tribunal also held that after grant of provisional approval, application for final registration could not be rejected on ground that institution had already commenced its activities even prior to grant of provisional registration and under such circumstances, date of commencement of activity would be counted when an activity was undertaken after grant of provisional registration either under clause (i) or clause (iv) to first proviso to section 80G(5) (AY. 2022-23 to 2026-27) *Rajbalhat Cultural Circle v. CIT (2024) 207 ITD 633 (Kol) (Trib.)*

285 **S. 12A : Registration-Trust or institution-Failure to furnish details of activity-Opportunity of hearing was not granted-Restored to file of Commissioner (E) for de novo adjudication. [S. 12A(1)(ac)(vi)]**

Assessee-trust is constituted with sole purpose of servicing Indian cows, providing relief and aid and a quality lifestyle to Indian cows, shelters and open land areas for their natural living. Assessee was granted provisional registration under section 12A(1)(ac)(vi)-Subsequently, application filed by assessee under section 12A(1)(ac)(iii) was rejected by Commissioner (E) on ground that there was no proper walls, cover to protect animals, residence of caretakers of animals, place where fodder can be stored, etc. and assessee had not furnished any documentary evidence regarding location of cowshed, name of place or village. On appeal the Tribunal held that since Commissioner (E) was not satisfied with details/evidence furnished by assessee but assessee was not granted with any other opportunity to meet objections of Commissioner (E), matter is remanded back for de novo adjudication.

Saaksh Foundation v. CIT (2024) 207 ITD 671/230 TTJ 171/238 DTR 449 (Mum) (Trib.)

286 **S. 12A : Registration-Trust or institution-Mistake in filing entry in Form No-10AB-Rejection of application is not proper-Commissioner (E) is directed to treat application of assessee under section 12A(1)(ac)(iii) and to consider case on merits. [S. 12A(1)(ac)(iii), Form No. 10AB]**

Assessee-trust filed an application for registration under section 12AB. However, at time of filing online application, it selected inadvertently section 12A(1)(ac)(iv) instead of section 12A(1)(ac)(iii). Assessee prayed to treat application as under section 12A(1)(ac)(iii). However, said prayer was not accepted by Commissioner (E) on ground that he had no power to change or rectify application filed in Form 10AB. On appeal the Tribunal held that since it was an inadvertent mistake and assessee had already explained facts and prayed for correction, mistake in filing entry was not fatal and thus issue could be considered in appropriate sub-clause of section 12A(1). Therefore, the order of rejection is set aside and Commissioner (E) is directed to treat application of assessee under section 12A(1)(ac)(iii) and to consider case on merits.

Shree Swaminarayan Gadi Trust v. CIT (2024) 207 ITD 666 /231 TTJ 595/240 DTR 371 (Surat) (Trib.)

287 **S. 12A : Registration-Trust or institution-Denial of registration-Details of expenditure on object of trust-Matter is remanded back to file of Commissioner (E) with a direction to substantiate objects with activities carried on-Provisional registration-Cancelled on ground that assessee did not furnish note on activities giving details of activities**

actually carried out by it-Matter is remanded back for disposal afresh. [S. 12A(1)(ac)(iii),12AB, 80G(5)]

Assessee-trust filed an application for registration under section 12A(1)(ac)(iii). Commissioner (E) held that assessee did not furnish note on activities giving details of activities actually carried out by assessee, details furnished were general in nature without activity-wise details. He further held that photographs submitted by assessee did not prove that activities were carried out by trust itself. He also observed that assessee did not provide details of expenditure on object of trust by producing bills/vouchers and supportings of expenditure incurred on object of trust. Accordingly, he rejected application of assessee for registration. On appeal the Tribunal held that since assessee had not provided necessary supporting evidences of expenditure incurred shown as spent on object of trust, matter is remanded back to file of Commissioner (E) with a direction to assessee to substantiate objects with activities carried on and necessary supporting of expenditure incurred shown as spent on object of trust. Tribunal also held that provisional registration granted to assessee-trust under section 12AB was cancelled on ground that assessee did not furnish note on activities giving details of activities actually carried out by it and matter remanded matter back to Commissioner(E) in view of fact that registration under section 80G(5) also depended on registration for disposal afresh. (2024-25)

Child Education and Vision Foundation v. CIT (2024) 206 ITD 683 (Mum) (Trib.)

S. 12A : Registration-Trust or institution-Mismatch of name-Registration application should not be rejected on mere mismatch of name especially when steps had been taken by assessee to update correct name in PAN database. [S. 12A(1)(ac)(iii)] 288

Assessee's registration application under section 12A(1)(ac)(iii) was rejected by CIT(E) due to a name mismatch. On appeal the assessee argued for reconsideration, asserting correct name as 'Surat Halai Memon Jamat and Halai Memon Jamat Kabrashatn' and refuting any benefit to a particular religious community or caste. Tribunal held that mismatch in name might be rectified and corrected and it should not be a reason to deny registration of assessee-trust. Further, since assessee had already taken steps to correct above name in PAN database, above name should be treated as a correct name and hence, Commissioner (E) is directed to consider above stated name of assessee-trust and registration should not be denied only on the ground of mismatch of name.

Surat Halai Memon Jamat v. CIT(E) (2024] 205 ITD 607 (Surat) (Trib.)

S. 12A : Registration-Trust or institution-Trust, corpus contribution-Corpus specific voluntary contribution-Trust not registered u/s 12A/12AA of the Act-Capital receipt cannot be assessed as income. [S. 2(24)(iia), 11(1)(d), 12A, 12AA] 289

Assessing Officer held that assessee-trust had received corpus donation grant from another trust. Since assessee was not registered under section 12A, he held that it was not eligible for exemption under section 11(1)(d) in respect of corpus donation received by it and, accordingly, treated said receipts as income of assessee. CIT(A) deleted the addition. On appeal the Tribunal held that since corpus specific voluntary contribution being in nature of capital receipt, was outside scope of income under section 2(24)(iia),

same could not be brought to tax even in case of trust not registered under section 12A/12AA. (AY. 2019-20)
ACIT v. Financial Inclusion Trust (2024) 204 ITD 211 (Delhi) (Trib.)

290 **S. 12A : Registration-Trust or institution-Insufficient time to respond to notice-Violation of the fundamental principles of natural justice-The ITAT also set aside the order rejecting the application u/s 80G (5) and directed the CIT (E) to decide the application afresh in accordance with law. [S. 12AB 80G(5), Form No. 10A]**
The appellant trust is a charitable trust formed with the objects of Indian Native Breed Cow cultivation, development, protection and awareness etc. It applied for registration u/s 12AB r. w. s. 12A of the Act in Form 10A and received a provisional registration. It also applied for registration u/s 80G (5) of the Act in Form 10AD. The ld. CIT(E) issued notices to the appellant trust seeking certain details and information regarding its activities, income and expenditure, and compliance with the conditions of registration. The appellant trust failed to respond to the notice within the stipulated time of five days. Consequently, the ld. CIT (E) rejected both the applications and cancelled the provisional registration by passing separate orders. The appellant trust challenged the orders before the ITAT on the grounds of violation of principles of natural justice, insufficient time to respond, and non-consideration of the merits of the case. The ITAT set aside the order rejecting the application u/s 12AB and remanded the matter to the ld. CIT (E) for de novo disposal after affording due opportunity of being heard to the appellant trust. The ITAT also set aside the order rejecting the application u/s 80G (5) on the same grounds and directed the ld. CIT (E) to decide the application afresh in accordance with law. (AY. 2023-24)
Chaitanya Goshala Trust v. CIT (E) [2024] 109 ITR 54 (SN) (Pune) (Trib)

291 **S. 12A : Registration-Trust or institution-Rejection of application on the ground of wrong code selected for provisional registration-and barred by limitation-Mistakes committed while applying registration could be condoned-Commissioner (E) directed to hear and dispose of request of assessee by allowing it to apply under Form 10A. [S. 12AB, Form 10A, 10AB]**
Held, that the Central Board of Direct Taxes by Circular No. 6 of 2023, dated May 24, 2023, had extended the date up to September 30, 2023, whereas the assessee filed form 10AB by May 15, 2023. Though the assessee did not plead before the Revenue authorities by that day about the mistake of selection of wrong section code while applying in form 10AB and seek rectification, the request of the assessee for regular registration was pending by that date. Therefore, the mistake committed by the assessee while applying for registration in form 10AB instead of form 10A and also by making a selection of the wrong section code, namely, 02-sub-clause (iii) of clause (ac) of sub-section (1) of section 12A of the Act instead of 02-sub-clause (i) of clause (ac) of sub-section (1) of section 12A of the Act was condoned. The Commissioner (E) is directed to hear and dispose of the request of the assessee by allowing it to apply under form 10A. (AY. 2024-25)
Mandava Foundation v. ITO (E) (2024)111 ITR 16 (SN)(Hyd)(Trib)

S. 12A : Registration-Trust or institution-Technical mistake in preparing application-Typographical error corrected-Remanded back to file of Commissioner (E) for fresh adjudication by considering amended application. [S. 12A(1)(ac)(ii), 12(ac)(iii), Form No10AB] 292

Assessee had committed a technical mistake in preparing application under section 12A(1)(ac)(ii) instead of section 12A(1)(ac)(iii). Thereafter, assessee had filed revised Form No. 10AB for seeking registration under correct provisions i. e. section 12A(1)(ac)(iii). Commissioner (E) rejected application of assessee society for grant of registration on ground that in application made in Form No. 10AB, section 12A(1)(ac)(ii) was mentioned. On appeal the Tribunal held that since typographical error made by assessee is corrected, appeal is remanded back to file of Commissioner (E) for fresh adjudication by considering amended application. (AY. 2024-25)

Vir Sewa Mandir v. CIT (2024) 208 ITD 629 (Delhi) (Trib.)

S. 12AA : Procedure for registration-Trust or institution-Condonation of delay-Application was rejected-Denial of exemption is justified-SLP rejected. [S. 260A, Art. 136] 293

The assessee had applied for registration under section 12AA as a charitable institution only in the year 2011-12 and the applications for condonation of delay, for certification for the previous years, having been rejected, exemption could not be allowed by the court exercising jurisdiction under section 260A of the Act, in a year in which such registration was not available. On petition for special leave to appeal to the Supreme Court. (AY. 2007-08, 2008-09, 2009-10)

Academy of Medical Sciences v. CIT (2024)460 ITR 592/ 297 Taxman 2 (SC)

Editorial : Refer Academy of Medical Sciences v. CIT (2018) 403 ITR 74 (Ker)(HC)

S. 12AA : Procedure for registration-Trust or institution-Cancellation of registration-Commissioner had no jurisdiction to cancel registration certificate once granted by him to assessee under section 12A till 1-10-2004. [S. 12A, 260A] 294

Assessee, an educational trust, claiming to be engaged in charitable activities by providing financial assistance to poor and needy students by way of fee concession. It had filed an application under section 12A for grant of registration which was allowed. Commissioner passed an order on 2-3-2010 cancelling registration on ground that assessee was not carrying out any charitable activities. Tribunal had restored registration holding that once Commissioner had granted registration to assessee-undertaking, he had no power to cancel same. Tribunal also held that an express power was conferred on Commissioner to cancel registration for first time by enacting sub-section (3) in section 12AA only with effect from 1-10-2004 by Finance (No. 2) Act, 2004, and, hence, such power could be exercised by Commissioner only on and after 1-10-2004. On appeal High Court affirmed the order of Tribunal. (AY. 2004-05, 2005-06, 2006-07, 2007-08)

CIT v. Young Scholar's Educational Society (2024) 299 Taxman 145/341 CTR 52 /242 DTR 252 /471 ITR 164 (P&H)(HC)

CIT v. Baba Banda Singh Bahadur Education Trust (2024) 341 CTR 52 /242 DTR 252 /299 Taxman 145 / 471 ITR 164 / 8 NYPCTR 889 (P&H)(HC)

295 **S. 12AA : Procedure for registration-Trust or institution-Charitable purpose-Object and genuineness of Trust-Tribunal justified in directing the Commissioner to grant registration and also approval under section 80G(5)(vi) of the Act. [S. 11, 80G(5)(vi), 254(1)]**

Dismissing the appeal of the Revenue the Court held that the Tribunal had recorded its satisfaction as the trust fulfilled the following two basic conditions for grant of registration under section 12AA of the Act : the object of the trust, and the genuineness of the activities of the trust/institution. The Tribunal had rightly directed the Commissioner to grant registration under section 12AA and also the approval under section 80G(5)(vi) of the Act to the assessee. The Commissioner was not to examine the genuineness of the activities of the trust and whether, if the trust transfers funds to another charitable society, it can be given exemption under section 11 of the Act. This power is restricted to the Assessing Officer. Hence, no useful purpose would be served by remanding the matter to the Commissioner to pass appropriate orders. (AY. 2016-17)
CIT (E) v. Nanak Chand Jain Charitable Trust (2024) 462 ITR 283/ 339 CTR 566 (P&H) (HC)

296 **S. 12AA: Procedure for registration-Trust or institution-Violation of provisions of section 13(1)(c)-Rejection of application not erroneous. [S. 11, 13(1)(c), 132, 133A]**

Held that no error was committed by the authority in scrutinizing the genuineness of activities of the institution in obtaining satisfaction to grant registration. Before the amendment of s. 12AA by the Finance Act, 2019 with effect from September 1, 2019, the requirement for obtaining satisfaction was only about the genuineness of activities of the trust or institution. The authority had found that the activities were done in such a way that it had led to surveying under section 133A against the assessee and a search and seizure operation under section 132 on the premises of its secretary. When the authority was confronted by the activities requiring survey, search, and seizure, there was the conclusion that satisfaction had not been obtained to grant registration. This, the authority had done as required and empowered by the provision existing before the amendment. The facts that the assessee had suffered survey and search and seizure operations in the course of conducting its activities under its objects and that there had been a violation of the provisions of section 13(1)(c) could be considered for satisfaction on the application for grant of registration under section 12AA. (AY. 1997-98, 2011-12)
CIT (E) v. Orissa Cricket Association [2024] 461 ITR 382 (Orissa)(HC)
Editorial : Order in Orissa Cricket Association v. CIT(E) (2018) 61 ITR 675 (Cuttack) (Trib), reversed.

297 **S. 12AA : Procedure for registration-Trust or institution-Contribution for establishment of a Dam from PHD Rural Development Foundation which is a social arm of PHD Chamber of Commerce and Industry-Not for profit-Matter is remanded to CIT(E) to decide whether activity is genuine or not. [S. 2(15), 12AB, 13(3), 80G (5)]**

Held that the applicability of the provisions of s. 13 is required to be looked into at the time of assessment of the trust income and if the assessee has given any benefit to the trustees which is violative of the provisions of s. 13, naturally the assessee will pay the higher taxes on the above sum as per the provisions of the law. While granting registration to the CIT(E) is required to make an enquiry about the genuineness of the

activities of the trust and compliance with the requirement of any other law, if those are material for the purpose of achieving its objects. The issue about the genuineness of the activity was decided only on the basis of few vouchers made available to the ITO(E). Assessee was never confronted with the views expressed by the CIT(E) about the genuineness. The matter is remanded to the file of CIT(E) in accordance with law. (AY. 2023-24)

Foundation for Ecological & Environmental Sustainability Trust v. CIT (E) (2024) 232 TTJ 210 (Jodhpur)(Trib)

S. 12AA : Procedure for registration-Trust or institution-Hospital-Letting of shops-Income is used for the objects of the Trust-Cancellation of registration is not valid. [S. 12A, 12AA(3)] 298

Held that though the receipts of the assessee-trust from the hospital activities are less, income from letting of shops are used for the objects of the Trust. Trustees have not misused the property of the trust. Genuineness of the trust is not in doubt hence the cancellation of registration is not valid.

Jodhpur Medical Research Centre v. CIT (E) (2024) 229 TTJ 909 / 239 DTR 9 / 166 taxmann.com 165 (Jodhpur) (Trib)

S. 12AA : Procedure for registration-Trust or institution-Cancellation of registration-Trust contains a covenant that enables the settlor to utilize the premises for herself or her family-Cancellation of registration is set aside. [S. 11(5), 12A, 12AA(3), 13 (3)] 299

Held that mere fact that the trust deed of the assessee-trust contains a covenant that enables the settlor to utilize the premises for herself or her family cannot empower the CIT to cancel the registration, as it does not lead to any conclusion that either the activities of the trust are not genuine or the activities are not being carried out in accordance with the objects of the trust. Similarly, the fact that huge Investments are made in mutual funds cannot also lead to the conclusion that the activities of the trust are not genuine-Since the settlor has died in the year 1965, the relevant clause has become infructuous and thus there is no question of violation of provisions of s. 13(3). Investments in mutual funds are only in order to meet the statutory requirements of S. 11(5). Order cancelling the registration is set aside. Followed *CIT(E) v. Institute Management Committee of Industrial Training Institute (2017) 293 CTR 167 / 148 DTR 74/ 393 ITR 161 (Bom) (HC)*

Mr. & Mrs. S. M. Batha Education Trust v. CIT (2024) 164 taxmann.com 266/ 228 TTJ 20 (UO) (Pune) (Trib)

S. 12AA : Procedure for registration –Trust or institution-cancellation of registration-New Section brought with effect from 1-4-2022 providing for reference by Assessing Officer to Principal Commissioner or Commissioner proposing withdrawal of registration in case of Specified violation by trust or institution-Amendment is prospective-Law inserted with effect from 1-4-2022 would not apply retrospectively-Cancellation of registration is bad in law and registration is to be restored. [S. 2(15), 11, 12AB(4), 13(2(a), 13(2)(g), 13(3)] 300

Held that in the case of the assessee, it had been held that doing business or not, did not warrant the cancellation of registration. The Department could not raise the issue

again and there must be some finality on the issue. The observations or reasons in the order of the Commissioner (E) under challenge had no validity as the issue had already become final. That in the absence of specific mention that the amended provisions operate retrospectively, the cancellation could not operate from a past date, in this case from the assessment year 2017-18. That the Commissioner (Exemption) had initiated proceedings of cancellation of registration based on the reference received from the Deputy Commissioner (E) dated February 6, 2020. There was no such reference after registration was granted on September 23, 2021. The provision for making the reference was inserted in law with effect from April 1, 2022 and at the time of reference, there was no provision for making such reference under the second proviso to section 143(3) of the Act for trusts and institutions referred to under section 11 of the Act. Therefore, the reference itself was without the authority of any statutory provisions and there is no fresh reference by the Assessing Officer. That the cancellation of registration under section 12AA(3) / 12AB(4) by the Commissioner (E) is bad in law and the registration already granted to the assessee is to be restored. (AY. 2017-18)
Centre for Development Communication Trust v. CIT (E) (2024)114 ITR 29 (Jaipur)(Trib)

301 **S. 12AA : Procedure for registration-Trust or institution-Failure to establish activities in consonance to object-Natural justice-Matter remanded to the CIT(E) to pass a de novo order in accordance with law after providing reasonable opportunity. [S. 2(15)]**
Assessee-trust filed an application for registration under section 12AA. CIT (E) rejected on ground that assessee-trust had not incurred any expense on actual charitable activity as mentioned in its Memorandum of Association. On appeal the Tribunal held that, since assessee had failed to establish carrying out of any of activities in consonance with stated charitable purposes of trust, in view of natural justice, it is deemed fit that assessee should be allowed one more opportunity to prove its claim before CIT(E). Accordingly, CIT(E)is directed to pass a de novo order in accordance with law after providing reasonable opportunity.
Chardikala Foundation v. CIT (2024) 209 ITD 197 (Amritsar) (Trib.)

302 **S. 12AA : Procedure for registration-Trust or institution-Cancellation of registration-Provisions of section 12AA/12AB do not provide for cancellation of registration with retrospective effect. [S. 12AB]**
Assessee trust had been granted registration under section 12A on 21.5.2014 w. e. f. 1.4.2013. A show cause notice was issued upon assessee on 6-10-2022 to cancel registration granted to assessee under section 12AA w. e. f. 1.4.2014 and passed an order cancelling registration. On appeal the Tribunal held that provisions of section 12AA/12AB do not provide for cancellation of registration with retrospective effect. Therefore, since show cause notice for cancellation of registration had been issued upon assessee by Principal Commissioner (E) on 6-10-2022, he could not have cancelled registration retrospectively with effect from 1-4-2014. (AY. 2023-24)
Maa Jagat Janani Seva Trust v. CIT (2024) 208 ITD 120 (Cuttack) (Trib.)

S. 12AA : Procedure for registration-Trust or institution-Delay of 840 days is condoned-On second application registration was granted on same set of facts-Matter is restored to CIT(E) to consider first application afresh, in accordance with law. [S. 11, 12A, 254(1)] 303

Delay in filing of appeal was caused due to bonafide mistake hence the delay of 840 days is condoned. On merit since subsequently upon filing of second application for registration, assessee was granted registration on same set of facts which pointed to fact that assessee had been able to establish that it was carrying on genuine charitable activities, in interest of justice, matter was to be restored to Commissioner (E) to consider first application of assessee afresh, in accordance with law. (AY. 2019-20)

Shree Asandas B Murjani Education Trust v. CIT (2024) 205 ITD 121 (Ahd) (Trib.)

S. 12AA : Procedure for registration-Trust or institution-Produced numerous documents under Rule 29 and also produced financials statements for relevant period-Matter remanded back for consideration afresh. 304

Assessee-society applied for registration under section 12AA. Commissioner (E) rejected registration application on ground that genuineness of activity undertaken by society i.e., selling of medicines or charity activities had not been proved. On appeal the Tribunal held that the assessee had produced numerous documents under rule 29 of Income-tax Appellate Tribunal Rules and also produced financials for period ending on 31-3-2019. Matter remanded back for consideration of documents produced by assessee. (AY. 2019-20)

Radha Madhav Nishkam Seva Samiti v. CIT (2024) 205 ITD 232 (Delhi) (Trib.)

S. 12AA : Procedure for registration –Trust or institution-Collusive arrangement with SRMAMET (a trust formed by same management committee as that of assessee-society)-Funds were channelized directly/indirectly for members of management committee, assessee-society-Violation of section 13(1)(c)-Cancellation of registration is justified. [S. 12A, 12AA(4)(a), 13(1)(c)(ii)] 305

Assessee-society is engaged in imparting education through a school and was granted registration under section 12A of the Act. Commissioner (E) cancelled registration granted to assessee on the ground that the assessee-society had not paid tax dues and it had entered into collusive arrangement with SRMAMET whereby school of assessee was transferred to SRMAMET; and application for registration under section 12AA was made by SRMAMET; in order to make assessee lose significance in running of school; with larger aim of frustrating lawful recovery of tax dues of assessee. In order rejecting application of SRMAMET seeking registration, it had been stated that entirely new institution (SRMAMET) was created by way of a trust which was formed by same management committee as that of assessee-society. Funds of assessee were channelized directly/indirectly for members of management committee and, thus, assessee-society clearly stood in direct violation of section 13(1)(c). The assessee had also not filed returns of income under section 139 and the activities of assessee were not genuine within meaning of section 12AA(3). Accordingly the activities of the Trust is hit by section 12AA(4)(a) read with section 13(1)(c)(ii) and section 12AA(4)(b). On appeal Tribunal affirmed the order of the CIT(E) cancelling the registration.

Shri Ram Murti Anchal Memorial Educational Society v. CIT (2024) 204 ITD 465 (Lucknow) (Trib.)

306 **S. 12AB: Procedure for fresh registration - Cancellation of registration with retrospective effect-On writ filed by the petitioner, the Court granted the interim stay-SLP of Revenue is dismissed. [S. 12A, 12AA, 12AB(4), Art. 136]**

The assessee-trust was granted registration u/s 12A on 28–05–2021 cancelled by the CIT by the order dt. 30–06–2023 u/s 12A read with section 12AA read with 12AB(4) with retrospective effect. On Writ Petition, to the Court on the issues concerning the jurisdiction and also on the merits. The Court observed the balance of convenience is in favour of the petitioner and would cause irreparable harm, resulting into disabling the assessee-trust from accepting any contribution from domestic contributors and would derail its programs in pipeline. The interim stay grated. SLP of Revenue is dismissed. (AY. 2021-22)

PCIT v. Centre for Policy Research [2024] 297 Taxman 135 / 462 ITR 1 (SC)

Editorial: Centre for Policy Research v. PCIT (Central) (2023) 156 taxmann.com 279 / (2024) 461 ITR 540 (Delhi)(HC)

307 **S. 12AB: Procedure for fresh registration-Reasonable opportunity-Violation of principle of natural justice-Alternative remedy-Writ petition is dismissed. [S. 12AB(4), Art. 226]**

Dismissing the petition the Court held that the assessee has an alternative remedy, hence the writ petition is dismissed.

Myadam Kishan Rao Charitable Trust v. CIT (E) (2024) 471 ITR 334 (Telangana) (HC)

308 **S. 12AB : Procedure for fresh registration-Wrong section code in Form 10A-Rejection of application is set aside-Matter remanded for reconsideration by Commissioner (Exemption). [S. 11,Form No 10A, Art. 226]**

Assessee-trust filed application in wrong section code in Form 10A. The said application was rejected by CIT(E). On writ the assessee contended that application had not been considered in its proper prospective by assigning reason and application of assessee for registration under section 12AB has been rejected. Allowing the petition the Court held that the order rejecting registration being without reason is set aside and application for registration under section 12AB is restored for reconsideration by Commissioner (Exemption). Matter remanded. (AY. 2022-23)

Parmeswari Bai Memorial Trust v. CIT (E) (2024) 298 Taxman 711 (Orissa)(HC)

309 **S. 12AB: Procedure for fresh registration-Cancellation of registration with retrospective effect-On writ filed by the petitioner, the Court granted the interim stay. [S. 12A, 12AA, 12AB(4), Art. 226]**

The assessee-trust was granted registration u/s 12A on 28–05–2021 cancelled by the CIT by the order dt. 30–06–2023 u/s 12A read with section 12AA read with 12AB(4) with retrospective effect. On Writ Petition, to the Court on the issues concerning the jurisdiction and also on the merits. The Court observed the balance of convenience is in favour of the petitioner and would cause irreparable harm, resulting into disabling the assessee-trust from accepting any contribution from domestic contributors and would derail its programs in pipeline. The interim stay grated.

Centre for Policy Research v. PCIT (Central) (2023) 156 taxmann.com 279 / (2024) 461 ITR 540 (Delhi)(HC)

Editorial : SLP of Revenue is dismissed, PCIT v. Centre for Policy Research [2024] 297 Taxman 135 / 462 ITR 1 (SC)

S. 12AB: Procedure for fresh registration-Denial of registration is justified if the trust had not complied with the applicable State law. [Form No. 10AB, Rajasthan Public Trust Act, 1959, S.17] 310

Commissioner (E) rejected assessee's application for registration under section 12AB on grounds that assessee was not registered under Rajasthan Public Trust Act, 1959, genuineness of activities of assessee could not be verified due to not submitting sought details, and assessee had filed incomplete Form No. 10AB. On appeal the Tribunal held that since Rajasthan Public Trust Act is applicable to assessee-trust but assessee had not followed provisions of Rajasthan Public Trust Act and assessee had not filed single document to prove genuineness of activities of trust, assessee is not eligible for registration under section 12AB of the Act. (AY. 2022-23 to 2024-25)

Gurukul Shikshan Sansthan v. CIT (2024) 165 taxxmann.com 369 (Jaipur)(Trib)

S. 12AB: Procedure for fresh registration-Registration granted cannot be cancelled without following due process of law-CIT(E) is directed to consider the assessee's application under S. 12A(1)(ac)(v) in Form 10AB seeking approval for change in its objects/rules/ regulations as per the new trust deed and pass an order afresh in accordance with law. [S. 12A(1)(ac)(v), 12AB(4), Form No. 10AB] 311

Tribunal held that there is no whisper in the order of the CIT(E) that there is violation of conditions on the basis of which the registration to the assessee-trust was granted. Genuineness of the religious activity carried on by the assessee trust cannot be doubted as it was only after the CIT(E) was satisfied about the genuineness of the religious activity of the trust that the registration to the trust was granted under s. 12AB. Non-compliance of any other law/furnishing of incomplete or false or incorrect information has also not been noticed by the CIT(E). The registration granted to the assessee under S. 12AB has been cancelled without following the due process of the principles of natural justice. The CIT(E) is not justified in cancelling the registration already granted to the assessee-trust. The CIT(E) is directed to consider the assessee's application under s. 12A(1)(ac)(v) in Form 10AB seeking approval for change in its objects/rules/ regulations as per the new trust deed and pass order afresh in accordance with law.

Shri Gayatri Sanshodhan Seva Mandal v. CIT (E) (2024) 230 TTJ 777 / 240 DTR 65 (Pune) (Trib)

S. 12AB: Procedure for fresh registration-Not registered under Rajasthan Public Trust Act, 1959-Fair chance should be given to cure the defect-Both the appeals relating to registration under S. 12AA and 80G are restored to the CIT(E) for afresh consideration. [S. 12AA, 80G] 312

Tribunal held that CIT(E) rejected registration under s. 12AB only for the reason that the assessee is not registered with the authority prescribed under the Rajasthan Public Trust Act, 1959 and that the assessee has not fully complied with the notice, the reasons advanced by the CIT (E) are curable in nature; as the assessee has already applied for registration as per the Rajasthan Public Trust Act, the assessee must be provided adequate opportunity of being heard and be given a fair chance by the CIT (E) to cure the defect and submission of certain information; both the appeals of the

assessee relating to registration under ss. 12AA and 80G are restored to the CIT(E) for afresh consideration. (AY. 2023-24)
Pacific Medicare Academy v. CIT (E) (2024) 229 TTJ 129 (UO) / 166 taxmann.com 245 (Jodhpur)(Trib)

313 **S. 12AB: Procedure for fresh registration-Cancellation of registration-Search and seizure –Originally assessed at Chandigarh-Centralised at Gurgaon-Case-Cancellation of registration by virtue of Jurisdiction under section 127 is not valid –Order of cancellation passed by Principal CIT, Gurgaon, is without jurisdiction in the context of territorial powers apart from the fact that it is not in accordance with law-Order is quashed. [S. 2(7A), 12AA, 12AB(4), 127(2), 132(1)]**
The assessee Trust is registered under the jurisdiction of Commissioner of Income tax Faridabad. There was search action in the case of Aggarwal Vidya Prachrani Sabha, hence the matter is centralized at Gurgaon by passing an order under section 127 of the Act. The Block assessment was completed from the Asst years 2014-15 to 2020-21. PCIT (Central) Gurgaon passed an order cancelling the registration by passing an order under section 12AB (4) of the Act. On appeal the Tribunal held that order passed under sub-cl. (a) to sub-s. (2) of S. 127 only referred to transfer of jurisdiction of 'AO' subordinate to CIT(E), Chandigarh to Dy. CIT, Central Circle-2, Faridabad as AO and not original jurisdiction of CIT(E), Chandigarh with regard to the subject matter as stands vested by order of CBDT dt. 22nd Oct., 2014. This delegation of powers by CIT(E), Chandigarh could have been qua officers subordinate to the CIT(E) only and he had no power to pass an order under S. 127(2) (b) to transfer powers vested by the Board to any other tax authority. Notification dt. 22nd Oct., 2014 does not mention specifically that the powers which can be exercised by the Principal CIT under S. 12AB can be transferred to other authorities. Accordingly while passing the order under S. 127, the CIT(E), Chandigarh could have transferred his powers under S. 12AB to any other authority. Term 'case' as defined in Explanation to S. 127 refers to assessment initiated as a consequence of search or consequential proceedings to such assessments only and cannot be extended to special powers of CIT(E) Principal CIT at Gurgaon did not have the power to cancel the registration of the assessee trust under S. 12AB(4) on the basis of the order under S. 127. Principal CIT has initiated action under s. 12AB(4) on the basis of a proposal conveyed through a letter dt. 23rd Aug., 2022. Since the assessment by the said AO was completed in September, 2021, i.e., before the letter dt. 23rd Aug., 2022, there was no occasion for the concerned AO to invoke reference powers under second proviso to sub-s. (3) of s. 143. The 'reference' by the jurisdictional AO was to be made not to the Principal CIT or CIT, to whom this AO was subordinate but one authorised by the Board for the purpose of S. 12AB. Assumption of jurisdiction for cancellation of registration under S. 12AB(4) by virtue of aforesaid transfer of jurisdiction order under S. 127 is not valid. The Principal CIT has not mentioned as to which amongst the various specified violations mentioned in Explanation to sub-s. (4) of S. 12AB were attracted so as to show-cause the assessee. Accordingly the order passed by Principal CIT, Gurgaon, without jurisdiction in the context of territorial powers apart from the fact that it is not in accordance with law, hence quashed.
Aggarwal Vidya Pracharni Sabha v. PCIT (2024) 228 TTJ 137 / 236 DTR 33 (Delhi)(Trib)

S. 12AB: Procedure for fresh registration-Company registered under Section 8 of the Companies Act, 2013-Withdrawn application under wrong advice-CIT(E) is justified in rejecting request for restoration of application under section 12AB of the Act [S. 12A, 12AB, Companies Act, 2013, S. 8] 314

The assessee withdrawn the application of registration under section 12AB of the Act for pursuing the Registration under Rajasthan Public Trust Act. The assessee came to know that State Registration is not required, if the trust is registered under the Companies Act. The assessee moved an application for restoration which was rejected y the CIT(E). On appeal the Tribunal also affirmed the order of the CIT(E) on the ground that the Revenue has not taken any advantages of the ignorance of the assessee. Appeal of assessee is dismissed.

Dharohar Charitable Foundation v. CIT(E) (2024) 163 taxmann.com 173 / 228 TTJ 13(UO) (Jodhpur) (Trib)

S. 12AB: Procedure for fresh registration-Cancellation of registration-Order of cancellation of registration is quashed-Document Identification Number-Order in CIT v. Brandix Mauritius Holdings Ltd (2024)158 taxmann. com 247 (SC) is suspended till issue decided by Supreme Court. [S. 12A, 12AA, 12AB(4)] 315

Held that the circular issued by the Central Board of Direct Taxes is binding on the authorities and the Commissioner (E) being an authority under the Central Board of Direct Taxes, his order passed without a document identification number, was non est and liable to be quashed, in view of Circular No. 19 of 2019, dated August 14, 2019(2019) 416 ITR 140 (St) issued by the Central Board of Direct Taxes. However, as the issue was stayed by the Supreme Court in the case of *CIT v. Brandix Mauritius Holdings Ltd. (2024)158 taxmann.com 247 (SC)*, the Tribunal's quashing of the order of the Commissioner (E) would be suspended till the issue was decided by the Supreme Court. On merit all the issues on the basis of which, the Commissioner (E) had cancelled the assessee's registration had already been settled by various appellate authorities on earlier occasions and the issues, having reached finality, could not be used for cancelling the assessee's registration. Therefore, the order under section 12AB(4) of the Commissioner (E) cancelling the assessee's registration is quashed on the merits.

People Forums v. CIT (E) (2024)114 ITR 418/229 TTJ 535/239 DTR 146 (Cuttack)(Trib)

S. 12AB: Procedure for fresh registration-Provisions Of Section 13 can be invoked only at time of assessment while considering eligibility for exemption and not at time of grant of registration-Order of CIT(E) is set aside and matter remanded for de novo consideration. [S. 11, 12, 12A, 13(3)] 316

Allowing the appeal, the Tribunal held that the provisions of section 13 of the Act can be invoked only at the time of assessment while considering the applicability of sections 11 and 12 with respect to the assessee's set of facts and not at the time of grant of registration under section 12A of the Act. The matter is restored to the Commissioner (E) for de novo consideration.

National Real Estate Development Council, Gujarat v. CIT (E) (2024)113 ITR 63 (SN) (Ahd)(Trib)

317 **S. 12AB: Procedure for fresh registration-Principle of natural justice-Cancellation of Registration--Time granted only 10 days to cure defects-Rejection of application is set aside. [S. 12A(1)(ac)(vi), R. 17A]**

Assessee filed an application seeking registration under section 12AB-Commissioner (E) held that the assessee had failed to annex required documents as contemplated under rule 17A(2)(k). In absence of compliance from assessee, Commissioner (E) rejected grant of regular registration and cancelled provisional registration granted to assessee under section 12AB read with section 12A(1)(ac)(vi). On appeal the Tribunal held that the assessee was accorded only ten days to cure defects and explain discrepancies. Accordingly the matter remanded to the file of CIT(E) for de-novo consideration.

Parner Vipassana Samiti v. CIT (2024) 209 ITD 370 (Pune) (Trib.)

318 **S. 12AB: Procedure for fresh registration-Objects were confined to a particular community-Rejection of application is not valid-Section 13(1)(b) is not relevant at stage of registration under section 12AB but rather comes into play at time of assessment when determining exemption under section 11-Rejection Order set aside. [S. 11, 13(1)(b)]**

Assessee-trust filed an application for registration under section 12AB declaring its aims and objectives primarily related to educational, social, and economic welfare activities. Commissioner (E) rejected registration application on ground that objects of trust were confined to a particular community, thus, attracting provisions of section 13(1)(b). On appeal the Tribunal held that registration under section 12AB is merely a recognition of charitable status of trust and that section 13(1)(b) is not relevant at stage of registration under section 12AB but rather comes into play at time of assessment when determining exemption under section 11 depending on actual income and activities of trust. Accordingly the CIT(E) erred in rejecting application for registration under section 12AB. (AY. 2022-23)

Shree Dandhavya chhasath Prajapati Samaj v. CIT (2024) 209 ITD 337 (Ahd) (Trib.)

319 **S. 12AB: Procedure for fresh registration-Construction and maintenance of crematorium for monks and Saints-Various activities without any discrimination based on caste, colour, or creed-Entitle to registration. [S. 2(15), 11]**

Assessee is a charitable trust established with objects of construction and maintenance of crematorium for monks and Saints, to maintain and manage temple, gurumandir, upashraya, construction of canteen, guest house etc.. It filed an application for registration under section 12AB. Commissioner (E) rejected the application on ground that objects of trust were for benefit of particular religion, community and that assessee had failed to substantiate charitable nature of trust as well as genuineness of its activities. On appeal the Tribunal held that the objects of assessee were for general public benefit and were not restricted to particular persons or community or caste. Facilities provided by assessee were intended to serve needs of attendees of various activities without any discrimination based on caste, colour, or creed. It is open for benefit for all sections of society and general public. Bhojansala is only for providing food to poor and needy persons of general public without any discrimination and it was open only for poor and needy persons to provide them food. Moreover, construction

of a crematorium and maintenance thereof was for objects of trust, which was not for particular caste, or community. CIT(E) is directed to grant the registration.
Akhil Bhartiya Pashwachandra Jain Charitable Trust v. CIT (2024) 209 ITD 385 (Rajkot) (Trib.)

S. 12AB: Procedure for fresh registration-Particular religious community or caste-Trust is in existence since 1946 i. e., prior to Income-tax Act came into force-Provisions of section 13(1)(b) is not be applicable. [S. 11, 13(1)(b), Rule 17A] 320
Assessee-trust is in existence since 1946. It applied for registration under section 12AB. Commissioner (E) rejected application for registration on ground that objects of assessee-trust were restricted to benefit of a particular religious community or caste and, therefore, provisions of section 13(1)(b) would be applicable and it would not be eligible for exemption under section 11. Tribunal held that since assessee-trust is in existence prior to Income-tax Act came into force, provisions of section 13(1)(b) would not be applicable to it, even if it is created only for a particular community. *CIT v. Palghat Shadi Mahal Trust (2020) 120 Taxman 889/ 254 ITR 212(SC), CIT v. Dawoodi Bohara Jamat (2014)222 Taxman 228 (Mag) / 364 ITR 31 (SC),* distinguished. (AY. 2022-23)
Levva Patel Gnati v. CIT (2024) 208 ITD 490 (Rajkot) (Trib.)

S. 12AB: Procedure for fresh registration-Trust or institution-Eligibility-Rajasthan Public Trust Act is applicable to assessee-trust-Trust was not registered under Rajasthan Public Trust Act-Not eligible for registration under section 12AB. [S. 12A, Rajasthan Public Trust, 1959, S. 17] 321
The assessee trust was formed on 26-12-2012. It filed an application for registration under section 12AB on 15-6-2022. CIT(E) rejected the application under S,12AB on ground of non-registration with the Rajasthan Public Trust Act, genuineness of activities could not be ascertained due to non-compliance and in completed Form 10AB filed by the assessee. On appeal the Tribunal held that since assessee had not followed provisions of Rajasthan Public Trust Act, as it was applicable to it, assessee would not be eligible for registration under section 12AB of the Act. Followed *Noble Education Society v. Chief CIT (2022) 290 Taxman 206/ 448 ITR 594 (SC)*, wherein the Court held that Charitable Institutions and Societies which may be regulated by State Laws have to be comply with them.
Lokesh Agarwal Dharmarth Charitable Trust v. CIT (2024) 207 ITD 796 (Jaipur) (Trib.)

S. 12AB: Procedure for fresh registration-Cancellation of registration-Technical mistake-Filed fresh Form No. 10AB-Order of CIT(E) is set aside-Matter is remanded back to his file for fresh adjudication. [S. 12A(1)(ac) (ii), Form No. 10AB] 322
Assessee is a charitable trust, filed application for registration in Form No. 10A under section 12A(1)(ac)(ii) and consequently, Form No. 10AC was issued granting provisional registration under section 12A(1)(ac)(vi). Subsequently, six months prior to expiry of provisional registration, assessee filed Form No. 10AB seeking registration under section 12A(1)(ac)(ii). Commissioner (E) rejected assessee's application treating it as infructuous and non-maintainable on ground that assessee ought to have applied under section 12A(1)(ac)(iii) instead of section 12A(1)(ac)(ii). On appeal the Tribunal held that since assessee

had simpliciter made a technical mistake in applying under section 12A(1)(ac)(ii) instead of section 12A(1)(ac)(iii) and even now assessee had filed fresh Form No. 10AB seeking registration under section 12A(1)(ac)(iii), order of Commissioner (E) is to be set aside and matter is remanded back to his file for fresh adjudication. (AY. 2023-24 to AY. 2025-26)
Sri Jeyamkonda Choleeswara Soundaranayaki Amman Kumbhabisheka Malar kuzhu v. ITO (2024) 206 ITD 7 (Chennai) (Trib.)

323 **S. 12AB: Procedure for fresh registration-Denial of registration-Failure to file income-tax returns and audit report for previous three preceding financial years-Under took to file before CIT(E)-Matter is remanded to the file of CIT(E). [S. 12AA]**
Assessee-trust filed application under section 12AB. Commissioner (E) issued notice requesting assessee to furnish detailed note on activities carried out by trust, as well as certain details/documents mentioned therein. As there was no response to notice, three hearing opportunities were given to assessee. However, assessee failed to file income tax returns and audit report for previous three years. Consequently, application of assessee was rejected. On appeal before the Tribunal it was contended that since it was granted provisional registration under section 12AA, final registration under section 12AB could not have been denied. Tribunal restored the matter to the file of CIT(E) with a direction upon him to provide further opportunity of being heard to assessee and consider documents, evidences which assessee would file as per notice issued by Commissioner(E).
Shree Shakuntal Education Trust v. CIT (2024) 206 ITD 451 (Ahd) (Trib.)

324 **S. 12AB: Procedure for fresh registration-Ex-parte order-Opportunity of hearing-Rejection of application-Violation of principle of natural justice-Matter remanded to the CIT(E) to pass the order giving a reasonable opportunity of hearing. [80G (5)**
Assessee-trust filed applications for registration under section 12AB and under section 80G(5). Commissioner (E) by ex parte orders rejected applications for registration under section 12AB and under section 80G(5). On appeal the Tribunal set aside the order and directed the CIT(E) to reconsider registration under section 12AB and under section 80G by providing one opportunity to assessee and pass orders strictly under provisions of law.
Global Academy for Medical Education & Science Trust v. CIT (2024) 206 ITD 524 (Ahd) (Trib.)

325 **S. 12AB: Procedure for fresh registration-Cancellation of registration-Provisions of section 12AB(4)(ii), which had been introduced by Finance Act, 2022 with effect from 1-4-2022 could not be invoked for cancellation of registration with retrospective effect from assessment year 2018-19 [S. 12A]**
Assessee-trusts is registered under section 12AA/12A. During course of search proceedings, Principal Commissioner cancelled registration granted to assessees under section 12AA/12AB with effect from previous assessment year 2017-18 and that of subsequent years as per provisions of section 12AB(4)(ii). On appeal the Tribunal held that in income-tax matters, law to be applied is law in force in assessment year unless otherwise stated or implied. Therefore, without a specific mention of amended

provisions to operate retrospectively, no cancellation for earlier years could be made. Accordingly, invoking of provisions of section 12AB(4)(ii) which had been introduced by Finance Act, 2022 with effect from 1-4-2022 for cancellation of registration with retrospective effect from relevant assessment year 2018-19, is bad in law as it was not explicitly provided in amended provisions to operate retrospectively. Cancellation of registration granted to assessee-trust is quashed. (AY. 2018-19)
Amala Jyothi Vidya Kendra Trust v. PCIT (2024) 206 ITD 601 (Bang) (Trib.)

S. 12AB: Procedure for fresh registration-Name mismatch-Translating name from Gujarati to English-Objects-Not any particular community-Matter remanded with the direction to examine the issue fresh. [S. 12A, 13] 326
Assessee a charitable trust, applied for regular registration under section 12AB after receiving provisional registration. However, said application was rejected by Commissioner (E) due to a name mismatch between official documents-Assessee clarified that their official name in Gujarati, Parul University Bhutpurva Vidhyarthi Mandal was translated to Parul University Alumni Association in English, preserving trust's legal status. On appeal the Tribunal held that the assessee has provided supporting documents to confirm accuracy of translation. Since the assessee had provided detailed explanation in support of alleged name mismatch, in such circumstances, rejecting trust's application based solely on this discrepancy is unwarranted. Accordingly, Commissioner (E) is directed to examine this issue afresh after taking on record detailed submissions filed by assessee. As regards the object of assessee-trust showed that it did not benefit a particular community and moreover, consideration of community benefit should occur during grant of exemption under section 11, and not during registration under section 12AA, therefore, is remanded to Commissioner (E) to examine if trust genuinely carried out activities eligible for registration under section 12AA/12AB.
Parul University Alumni Association v. CIT (2024) 206 ITD 706/229 TTJ 105 (UO) (Ahd) (Trib.)

S. 12AB: Procedure for fresh registration-Denial of registration Objects of trust were not restricted to particular religious community or caste sunni muslims-CIT(E) is directed to reconsider the application and decide according to law. [S. 11, 12A, 13(1)(b)] 327
Assessee-trust filed an application for registration under section 12AB. Commissioner (E) held that trust is religious-cum-charitable trust and its objects were in nature of charitable but same were restricted to benefit of a particular religious community or caste 'sunni muslims' and, thus, assessee would not be eligible for exemption under section 11 by virtue of section 13(1)(b). On appeal the Tribunal held that all objects of trust were not restricted to particular religious community or caste sunni muslims. Therefore, matter is remanded back to file of Commissioner (E) to reconsider application of assessee regarding registration under section 12AB.
Sunni Muslim Jamat Aamena Madressa Ebdatgah Waqf Committee v. CIT (2024) 206 ITD 691 /231 TTJ 783 (Surat) (Trib.)

328 **S. 12AB: Procedure for fresh registration-Denial of exemption-Religious trust-Provisions of section 13 can be invoked by Assessing Officer while framing assessment and not by Commissioner while considering application for registration under section 12A/12AB. [S. 13, 12A, 13, Form No. 10AB]**

Assessee-trust filed application for registration of trust under section 12AB. Commissioner (E) denied same observing that various objects which were otherwise charitable in nature, were for benefit of a particular religious community i. e. Muslims only. On appeal the Tribunal held provisions of section 13 can be invoked by Assessing Officer while framing assessment and not by Commissioner while considering application for registration under section 12A/12AB. Accordingly the order is set aside and CIT(E) is directed for de novo consideration with direction not to disentitle assessee for grant of registration. Followed, *CIT(E) Bayath Dasha Oswal Jain Mhajan Trust (2016) 243 Taxman 60 (Guj)(HC)*. (AY. 2022-23)

Anjuman E Nusratul Muslimin Tankaria. v. CIT (2024) 206 ITD 781 (Ahd) (Trib.)

329 **S. 12AB: Procedure for fresh registration-Provisionally registered-Registration-Time limit-Final registration-CIT(E) rejected application as premature-There is no bar on applicant to move an application before period of six months from expiry of provisional registration-CIT(E) is directed to reconsider application-Provisional approval under section 80G(5)(iv) was granted-Application for final approval could not be rejected on ground that institution had already commenced its activities even prior to grant of provisional registration. [S. 12A(1)(ac)(iii), 80G]**

Assessee-trust applied for final registration under section 12A(1)(ac)(iii) after being provisionally registered under section 12AB. CIT(E) rejected application as premature, citing existing provisional registration valid until A. Y. 2026-27. On appeal the Tribunal held that as per section 12A(1)(ac)(iii) an application for final registration has to be made at earliest possible event i.e. either within six months of commencement of activities or at least six months prior to expiry of provisional registration and aforesaid provision does not mean that there is any bar on applicant to move an application before period of six months from expiry of provisional registration. Accordingly the order of CIT(E) is set aside and matter was to be restored to CIT(E) to consider application of assessee for final registration and grant same if same was otherwise so admissible. The Tribunal also held that where assessee-trust had been granted provisional approval under section 80G(5)(iv), application for final approval could not be rejected on ground that institution had already commenced its activities even prior to grant of provisional registration. CIT(E) is directed to decide application of assessee for final approval as expeditiously as possible but not later than two months from receipt of this order. (AY. 2026-27)

Mallarpur Naisuva v. CIT (E) (2024) 206 ITD 792 (Kol) (Trib.)

330 **S. 12AB: Procedure for fresh registration-Registered under section 12AA-Filed application in Form No. 10A well within due date for fresh registration under section 12AB-Entitled for grant of registration from assessment year 2021-22. [S. 11, 12A(1), 12AA]**

Assessee-trust is already registered under section 12AA. It due to amendment in Income-tax Act, i. e., insertion of clause (ac) to section 12A(1) with effect from 1-4-2021 filed an

application in Form No. 10A well within due date for fresh registration under section 12AB. Commissioner (E) granted registration in Form No. 10AC only from assessment year 2022-23 instead of from assessment year 2021-22 for reason that CPC processed return filed by assessee, wherein CPC had noted that new registration details were not available in return and denied benefit under section 11 to assessee. On appeal the Tribunal held that since assessee was not able to file details of registration along with return for reason that no fresh registration was available with it as per amended law, the Commissioner (E) by following observations of CPC could not have denied registration to assessee from assessment year 2021-22. Accordingly the assessee is entitled for grant of registration from assessment year 2021-22.
Cheyyar Virutcham Educational Trust v. ACIT (2024) 205 ITD 370 (Chennai) (Trib.)

S. 12AB: Procedure for fresh registration-Charitable or religious trust-Objects of assessee-trust were primarily charitable rather than favouring any specific religious community, CIT(E) was not justified in denying registration under section 12A, by invoking section 13(1)(b) as said provisions would be attracted only at time of assessment and not at time of grant of registration. [S. 11, 12A, 13(1)(b)] 331
Assessee-trust applied for registration under section 12AB. Commissioner (E) denied registration, on ground that trust's objectives primarily benefitted a specific religious community, Muslims. By invoking section 13(1)(b), Commissioner denied registration under section 12A. Tribunal held that provisions of section 13(1)(b) would apply only at time of grant of exemption under section 11, and not at time of grant of registration under section 12A. Since majority of objects of assessee-trust was found to be not catering to a particular community and there was no finding of assessee actually catering for benefit of a particular community, there was no case for invoking section 13(1) (b). Therefore, denial of registration was to be overturned, and Commissioner (E) was to be directed to grant registration under section 12A to assessee-trust. (AY. 2022-23)
Jamiatul Banaat Tankaria v. CIT (2024) 205 ITD 673 (Ahd) (Trib.)

S. 12AB: Procedure for fresh registration-Fee concession etc to some students-Matter is remanded to the CIT(E) to decide a fresh. [S. 12A(1)(ac)(v), 12AA] 332
Assessee, an educational society, had applied for registration under section 12AA of the Act. CIT (E) rejected registration application of assessee on ground that assessee-society favoured some students through fee concession etc. which was held as against stated objects of society. On appeal, Tribunal had set aside matter back to Commissioner (E) for one more opportunity to assessee for substantiating its claim. - Meanwhile, assessee in view of amended provisions of registration under section 12AB applied before Commissioner (E) invoking section 12A(1)(ac)(v). Commissioner (E) rejected application of assessee observing that no change or modification in objects of society was made. Thereafter, in compliance of order of Tribunal, Commissioner (E) vide his order dated 27-2-2023 allowed registration under section 12AA for period from assessment years 2017-18 to 2021-22 subject to certain conditions. Tribunal held that in view of registration under section 12AA granted post facto, since assessee-society had become eligible for applying for registration under section 12AB by making application under section 12A(1)(ac)(i), matter is restored to Commissioner (E) for deciding afresh.
Sri Gurutegh Bahadur Education Society v. CIT (2024) 204 ITD 448 (Jabalpur) (Trib.)

333 **S. 12AB: Procedure for fresh registration-Cancellation of registration-Provisions of section 12AB(4)(ii), which had been introduced by Finance Act, 2022 with effect from 1-4-2022 could not be invoked for cancellation of registration with retrospective effect from assessment year 2021-22. [S. 12A, 12AA, 12AB(4)(ii), 132]**

Assessee-trusts were registered under section 12AA/12A. During course of search proceedings, Principal Commissioner cancelled registration granted to assessees under section 12AA/12AB with effect from previous assessment year 2020-21 and that of subsequent years as per provisions of section 12AB(4)(ii) of the Act. On appeal the Tribunal held that in income-tax matters, law to be applied is law in force in assessment year unless otherwise stated or implied. Without a specific mention of amended provisions to operate retrospectively, no cancellation for earlier years could be made. Therefore, invoking provisions of section 12AB(4)(ii), which had been introduced by Finance Act, 2022 with effect from 1-4-2022 for cancellation of registration with retrospective effect from relevant assessment year 2021-22, was bad in law as it was not explicitly provided in amended provisions to operate retrospectively. Thus, cancellation of registration granted to assessee-trusts is quashed. (AY. 2021-22)

Amala Jyothi Vidya Kendra Trust v. PCIT (2024) 204 ITD 605 /227 TTJ 209 (Bang) (Trib.)
Adarsh Vidya Kendra Trust v. PCIT (2024) 204 ITD 605 /227 TTJ 209 (Bang) (Trib.)

334 **S. 12AB: Procedure for fresh registration-Denial of registration-Genuineness of activities-Commissioner was justified in rejecting application for registration under section 12AB as not maintainable in law. [S. 12A(1)(ac)(iii), R. 17A(2)]**

Assessee trust filed its application for registration under section 12AB. CIT (E) rejected registration on ground that assessee had failed to file documentary evidences to enable him to be satisfied about genuineness of activities of assessee and to verify if its activities were in consonance with its objects. He also rejected application on ground that it was not filed within due date prescribed under section 12A(1)(ac)(iii). Tribunal held that in absence of any details filed by assessee before any authority, there was no infirmity in order passed by Commissioner rejecting application for registration under section 12AB as not maintainable in law.

Amrut Antimdham Charitable Trust v. CIT (2024) 204 ITD 625 /231 TTJ 491 (Ahd) (Trib.)

335 **S. 12AB: Procedure for fresh registration-Genuineness of activities-Failure to file documentary evidences to verify the activities in consonance with its objects-Rejection of application is held to be justified. [S. 12A(1), R. 17A(2), Form No. 10AB]**

Assessee filed its application for registration u/s 12AB in form no. 10AB. The Commissioner asked the assessee to furnish the details of activities to be carried out by assessee and also the details of documents as prescribed under rule 17A(2). The assessee failed to file the documentary evidences to satisfy the genuineness of its activities and to verify activities were in consonance with its objects. The commissioner rejected the application. On appeal the ITAT held that the assessee failed to satisfy the genuineness of the activities carried out by the assessee and the Commissioner is justified in rejecting the application. Appeal of the assessee is dismissed. (AY. 2023-24)

Amrut Antimdham Charitable Trust v. CIT (E) (2024) 204 ITD 625 (Ahd) (Trib)

S. 13 : Denial of exemption-Trust or institution-Investment restrictions-Purchase of luxury vehicle-Registered in name of managing trustee-Not able to establish that vehicle was utilized for purpose of charitable activities-Exemption under sections 11 and 12 is denied on value of vehicle purchased [S. 11, 12, 13(1)(c)] 336

Assessee-trust was conducting its activities in carrying out charitable activities, i. e., education, relief to poor, etc.. During year, assessee purchased a luxury vehicle by utilizing funds of assessee-trust and same was registered in name of managing trustee. Assessing Officer denied exemption under sections 11 and 12 to extent of value of that vehicle on ground that objects of assessee trust were carrying out of charitable activities and fund collected for this charitable purposes was utilized for enjoyment of trustees by means of purchase of said vehicle in name of managing trustee which was a clear violation under section 13(1)(c). CIT(A) affirmed the order of the AO. On appeal the Assessee contended that car was purchased in name of managing trustee for simple reason that it gave relief by way of lower road/life tax and insurance charges. Tribunal held the assessee could not prove as to what use this asset was put to by trust in work of trust and for purposes for which trust had been set up. Since assessee was not able to establish that said vehicle is utilized for purpose of charitable activities, the order of lower authorities denying the exemption under sections 11 and 12 is affirmed. (AY. 2016-17)

Sri Karpaga Vinayagar Educational and Charitable Trust v. ITO (2024) 208 ITD 333 (Chennai) (Trib.)

S. 13 : Denial of exemption-Trust or institution-Investment restrictions-Payment to specified person-Payment of salaries-Much higher educational qualification or they were having much experience in service-Exemption is allowed-Payment of rent-Market rental report prepared by a Government approved registered Valuer-Provisions under section 13(3)(c), 13(2)(c) read with section 13(2)(g) were not attracted. [S. 11, 12A, 13(2)(c), 13(3), 13(2(g)] 337

Assessing Officer held that the assessee had made large payment of salaries to certain specified persons under section 13(3) who were in occupation with educational institutes run by trust which were not justifiable as compared to payments made to other persons who had rendered same services. Assessing Officer by invoking provisions under section 13(3)(c), 13(2)(c) read with section 13(2)(g) rejected claim of exemption under section 11. CIT(A) allowed the claim. On appeal the Tribunal held that the persons were either having much higher educational qualification than other staff members or they were having much more experience in service, as compared to other staff members having similar educational qualification. On facts, salaries paid by assessee was not found to be excessive of what be reasonably paid to specified persons under section 13(3) and, thus, provisions under section 13(3)(c), 13(2)(c) read with section 13(2)(g) were not attracted. Exemption is allowed. To justify payment of rent paid, assessee had furnished Market Rental Report prepared by a Government Approved Registered Valuer who computed market rent of certain amount. However, Assessing Officer merely on ad hoc basis considered a small amount as monthly rent and disallowed balance rental payments made by assessee. On appeal the Tribunal held that rent was not found to be excessive of what be reasonably paid to specified persons

under section 13(3) and therefore, provisions under section 13(3)(c), 13(2)(c) read with section 13(2)(g) were not attracted. (AY. 2017-18)
DCIT v. Catholic Education Society. (2024) 207 ITD 226/232 TTJ 221/243 DTR 1 (Mum) (Trib.)

338 **S. 13: Denial of exemption-Trust or institution-Investment restrictions-The transaction for purchase of land was a genuine and commercial transaction therefore, the provisions outlined in section 13(2)(a) do not apply to it. [S. 11, 12A, 13(1)(c), 13(2)(a)]**
The appellant society is a charitable institution registered u/s 12A of the Income Tax Act, 1961 (the Act), engaged in the promotion of education. It claimed exemption u/s 11 of the Act for the surplus of income over expenditure for the assessment year. The Assessing Officer (AO) denied the exemption on the ground that the appellant society had violated the provisions of section 13(1)(c) and 13(2)(a) of the Act by diverting funds to a specified person, who is the son of the founder and the managing trustee of the society. The AO also added notional interest on the advance paid by the society to the individual in question, for the purchase of land, which remained in his name for more than 10 years. The Commissioner of Income Tax (Appeals) (CIT(A)) confirmed the additions made by the AO. The appellant society challenged the order of the CIT(A) before the Tribunal.
The Tribunal allowed the appeal of the appellant society and deleted the additions made by the AO and confirmed by the CIT(A). The Tribunal held that:
The advance paid by the appellant society to the individual for the purchase of land was a genuine and commercial transaction and not a diversion of funds to a specified person. The transaction was accepted by the department in the earlier and subsequent years and no adverse inference was drawn. The transaction was also examined and approved by the CIT(E) who dropped the proceedings for withdrawal of registration u/s 12AA of the Act. The provisions of section 13(1)(c) and 13(2)(a) of the Act were not applicable to the transaction as it was not a case of money lent to a specified person. The appellant society was entitled to the exemption u/s 11 of the Act for the surplus of income over expenditure.
The addition of notional interest on the advance paid by the appellant society to the individual for the purchase of land was not justified as there was no income accrued or received by the society. The interest income on notional basis cannot be subjected to tax as per the settled law. The provisions of section 13(1)(d) of the Act were not applicable to the transaction as it was not a case of investment in the name of a specified person. The appellant society had notorized the agreement to sale and recorded the land in its balance sheet as an asset. (AY. 2016-17)
Rastogi Education Society v. ITO (E) [2024] 109 ITR 63 (SN.)/ 161 taxmann.com 220 (Raipur)(Trib)

339 **S. 13A : Political parties-Denial of exemption-Stay-Pendency of matter before Supreme court-Concession made by Revenue, no coercive action of any nature shall be taken against assessee till next date of hearing on 24-7-2024 [S. 11, Art. 136]**
Assessee, a political party, claimed exemption under section 13A. Assessing Officer disallowed assessee's claim for exemption under section 13A and raised demand. During pendency of matter, several demands were made during month of March, 2024,

therefore, assessee sought for an urgent hearing of application. Revenue submitted that issues which arose in these appeals were yet to be adjudicated upon but having regard to impending elections, revenue did not wish to precipitate matter inasmuch as no coercive steps shall be taken with regard to total demand of Rs. 3,500 crores approximately. Revenue also submitted that a date may be notified for hearing these appeals in second week of July, 2024 and till then, assessee herein could have no apprehension regarding any coercive step being taken with regard to aforesaid demand. In view of submission by way of a concession made by revenue, no coercive action of any nature shall be taken against assessee till next date of hearing on 24-7-2024. (AY. 2018-19)

Indian National Congress (I) / All India Congress Committee v. CIT (2024) 298 Taxman 749 / 337 CTR 998 (SC)

Editorial: Indian National Congress v. Dy. CIT(2024) 160 taxmann.com 359 (Delhi) (HC)

S. 13A : Political parties-Income of political parties-Electoral Bond-Constitutional validity-Right to information of the voter includes the right to information of financial contributions to a political party because of the influence of money in electoral politics (through electoral outcomes) and Governmental decisions (through a seat at the table and quid pro quo arrangements between the contributor and the political party)-Plea of infringement of the right to privacy has no application at all if the donor makes the contribution, that too through a banking channel, to a political party-Amendment to S. 182 of the Companies Act is manifestly arbitrary for (a) treating political contributions by companies and individuals alike; (b) permitting the unregulated influence of companies in the governance and political process violating the principle of free and fair elections; and (c) treating contributions made by profit-making and loss-making companies to political parties alike-Electoral Bond Scheme, the proviso to S. 29C(1) of the Representation of the People Act, 1951 (as amended by S. 137 of Finance Act, 2017), S. 182(3) of the Companies Act (as amended by S. 154 of the Finance Act, 2017), and s. 13A(b) of the IT Act (as amended by s. 11 of Finance Act, 2017) are violative of Art. 19(1)(a) and unconstitutional-Deletion of the proviso to S. 182(1) of the Companies Act permitting unlimited corporate contributions to political parties is arbitrary and violative of Art. 14 [S. 11, 13(A)(b), Companies Act, S. 182, Representation of the People Act, 1951 (as amended by s. 137 of Finance Act, 2017, Finance Act, 2017, S. 11, 135, 137 & 154, Companies Act, 2013, S. 182, Money Laundering Act, 2002, Reserve Bank of India Act, 1934, S. 31, Representation of the People Act, 1951, S. 29C(1), Art. 14, 19, 21, 32, Electoral Bond, Scheme,2018, 7(4)] 340

The petitioners have instituted proceedings under Art. 32 of the Constitution challenging the constitutional validity of the Electoral Bond Scheme, which introduced anonymous financial contributions to political parties. The petitioners have also challenged the provisions of the Finance Act, 2017 which among other things, amended the provisions of the Reserve Bank of India Act, 1934, (S. 135 of the Finance Act, 2017 "RBI Act"), the Representation of the People Act, 1951 (S. 137 of the Finance Act, 2017 ; "RPA") the IT Act, 1961 (S. 11 of the Finance Act, 2017; IT Act") and the Companies Act, 2013)(S. 154 of the Finance Act, 2017 ; "Companies Act"). Court held that, Electoral Bond Scheme does not fulfil the least restrictive means test. The Electoral Bond Scheme is not the

only means for curbing black money in electoral finance. There are other alternatives which substantially fulfil the purpose and impact the right to information minimally when compared to the impact of electoral bonds on the right to information. Financial contributions to political parties are usually made for two reasons. First they may constitute an expression of support to the political party and second, the contribution may be based on a quid pro quo. The law as it currently stands permits contributions to political parties by both corporations and individuals. The huge political contributions made by corporations and companies should not be allowed to conceal the reason for financial contributions made by another section of the population: a student, a daily wage worker, an artist, or a teacher. When the law permits political contributions and such contributions could be made as an expression of political support which would indicate the political affiliation of a person, it is the duty of the Constitution to protect them. Not all political contributions are made with the intent of attempting to alter public policy. Contributions are also made to political parties which are not substantially represented in the legislatures. Contributions to such political parties are made purely with the intent of expressing support. At this juncture, the close association of money and politics needs to be recounted. Money is not only essential for electoral outcomes and for influencing policies. It is also necessary for true democratic participation. It is necessary for enhancing the number of political parties and candidates contesting the elections which would in-turn impact the demographics of representatives in the assembly. It is true that contributions made as quid pro quo transactions are not an expression of political support. However, to not grant the umbrella of informational privacy to political contributions only because a portion of the contributions is made for other reasons would be impermissible. The Constitution does not turn a blind eye merely because of the possibilities of misuse. Accordingly the Court held that Electoral Bond Scheme, the proviso to section 29C(1) of the Representation of the People Act, 19951 (as amended by S. 137 of the Finance Act, 2017, S. 182 (3) of the Companies Act (as amended by S. 154 of the Finance Act, 2017) and S. 13A(b) of the IT Act (as amended by S. 11 of the Finance Act, 2017) are violative of Art. 19(1)(a) and unconstitutional ; deletion of the proviso to S. 182(1) of the Companies Act permitting unlimited corporate contributions to political parties is arbitrary and violative of Art. 14. *Association for Democratic Reforms v. UOI (2024) 337 CTR 389 /159 taxmann.com 383 (SC) / [2024] 183 SCL 147 (SC)/[2024] 243 COMP CASE 115 (SC)*

Editorial : Refer, State Bank of India v. Association for Democratic Reforms [2024] 298 Taxman 352 (SC)

341 **S. 13A : Political parties-Electoral Bond Scheme-Declared unconstitutional-Direction to submit details of Electoral Bonds purchased-Time to extend the publication of details of purchasers of Bonds-The miscellaneous Application filed by SBI seeking an extension of time for disclosure of details of purchase and redemption of Electoral Bonds until 30-6-2024 was dismissed and SBI was directed to disclose details by close of business hours on 12-3-2024. [Art. 19(1)(g)]**

Electoral Bond Scheme was declared unconstitutional by Supreme Court on ground that non-disclosure of information regarding funding of political parties was violative of right to information of citizens under article 19(1)(a) of Constitution. To give full effect to said judgment, State Bank of India (SBI), which was authorized Bank to deal with Electoral

Bonds under Electoral Bond Scheme, was directed to submit details of Electoral Bonds purchased by contributors and redeemed by political parties between 12-4-2019 (date on which an interim order was passed by Supreme Court directing Election Commission of India to collect details of contributions) till 15-2-2024 (date of said judgment). SBI filed a miscellaneous application seeking extension of time until 30-6-2024 for complying with said directions on ground that process of 'decoding Electoral Bonds and matching donor to donations' was a complex and time-consuming exercise. Since details of Electoral Bonds which had been purchased and which had been directed to be disclosed were readily available, SBI was not justified in seeking extension of time. Accordingly the miscellaneous Application filed by SBI seeking an extension of time for disclosure of details of purchase and redemption of Electoral Bonds until 30-6-2024 is dismissed and SBI is directed to disclose details by close of business hours on 12-3-2024.
State Bank of India v. Association for Democratic Reforms (2024) 298 Taxman 352 (SC)
Editorial : Association of Democratic Reforms v. UOI (2024) 159 taxmann.com 383/ [2024] 183 SCL 147 (SC)/[2024] 243 COMP CASE 115 (SC)

S. 14A : Disallowance of expenditure-Exempt income-Borrowed capitals-Investing in shares to earn income from dividend-Expenditure incurred on interest paid on borrowed funds is not allowable as deduction-SLP of assessee dismissed [S. 10(33), 36(1)(iii), Art. 136] 342

Assessee claimed deduction on interest paid on borrowed capitals for investing in shares of his two companies. Assessing Officer disallowed interest, by holding that purpose of investment was to earn income in form of dividend from two companies and same being not taxable, therefore, deductions were not permissible for expenses related to income not forming part of total income under Act. CIT(A) and Tribunal affirmed the disallowance. On appeal the Tribunal held that since dividend income from two companies was not taxable, in that scenario expenditure incurred on interest paid on funds borrowed in respect of investment in shares of two operating companies was hit by section 14A inasmuch as dividend received on such shares did not form part of total income. Therefore, interest paid on borrowings is not allowable as deduction. Followed *Maxopp Investment Ltd v. CIT (2018) 254 Taxman 325 / 402 ITR 640 (SC)*. High Court affirmed the order of Tribunal. SLP of assessee dismissed. (AY. 1998-99)
Mahesh K. Mehta v. Dy. CIT (2024) 300 Taxman 600/ 469 ITR 397 (SC)
Editorial : Mahesh K. Mehta v. Dy. CIT (2024) 298 Taxman 238 /471 ITR 237 (Bom.) (HC)

S. 14A : Disallowance of expenditure-Exempt income-Interest free funds-Presumed that investments were made out of interest-free fund-Disallowance cannot be made-Order of High Court is affirmed-SLP of revenue dismissed. [R. 8D, Art. 136] 343

Dismissing the SLP of the revenue the Court held that High Court held that where both interest-free and interest bearing funds were available with assessee, it was to be presumed that investments were made out of interest-free fund and, thus, disallowance made under section 14A was to be deleted. (AY. 2011-12)
PCIT, Central v. Shapoorji Pallonji and Co. Ltd. (2024) 300 Taxman 182 (SC)
Editorial : PCIT, Central v. Shapoorji Pallonji and Co. Ltd. (2024) 164 taxman.com 707 (Bom)(HC)

344 **S. 14A : Disallowance of expenditure-Exempt income-Disallowance made voluntarily was more than exempt income-No further disallowance can be made-Delay of 340 days-SLP of revenue dismissed on account of delay in filing of SLP-Question of law, if any is kept open. [R. 8D, Art. 136]**

High Court held that where amount of disallowance made voluntarily by assessee was more than exempt income, same would meet requirements as set out in section 14A. SLP filed by revenue dismissed on ground of delay of 340 days. Question of law, if any is kept open. (AY. 2014-15)

PCIT v. Coffee Day Enterprises Ltd. (2024) 300 Taxman 357 (SC)

Editorial : PCIT v. Coffee Day Enterprises Ltd. (2024) 165 taxmann.com 328 (Karn) (HC)

345 **S. 14A : Disallowance of expenditure-Exempt income-Shares held as stock in trade-Dividend income earned-Order of Tribunal deleting the addition is affirmed by High Court-SLP of revenue dismissed. [Art. 136]**

The assessee, a housing finance company earned exempt income from shares held as stock in trade. The Supreme Court has in Maxopp's case conclusively held that in cases where shares are held by assessee as stock-in-trade, the dividend earned on the said shares is incidental and would not attract the provisions of section 14A of the Act. (Followed: *Maxopp Investment Ltd. v. CIT (2018) 91 taxmann.com 154/ 254 Taxman 325 / 402 ITR 640 / (2018) 15 SCC 523 and South Indian Bank Ltd. v. CIT (2021) 130 taxmann.com 178 / 283 Taxman 178 / 438 ITR 1 (SC)* High Court affirmed the order of Tribunal. SLP of revenue dismissed. (AY. 2010-11)

PCIT v. PNB Housing Finance Ltd. (2024) 297 Taxman 229 /461 ITR 481 (SC)

Editorial : PCIT v. PNB Housing Finance Ltd (2023) 146 taxmann.com 445 / (2024) 461 ITR 476 (Delhi) (HC)

346 **S. 14A : Disallowance of expenditure-Exempt income-Amendment to section 14A by inserting explanation (Amended vide Finance Act, 2022) is applicable prospectively from AY. 2022-23 and not applicable to AY. 2013-14. [R. 8D]**

Dismissing the appeal of the Revenue the Court held that amendment brought in section 14A of the Act, inserted by Finance Act, 2022 vide explanation is clarificatory in nature has prospective effect. The said amendment clarified and brought the exempt income, even when not earned during the year, under the ambit of section 14A effective from 1-4 2022. Accordingly the amendment will apply in relation to AY. 2022-23 and subsequent assessment years. (AY. 2013-14)

PCIT v. Keti Construction Limited (2024) 162 taxmann.com 278 (MP)(HC)

347 **S. 14A : Disallowance of expenditure-Exempt income-Disallowance cannot exceed the exempt income-No substantial question of law. [S. 260A]**

Dismissing the appeal of the Revenue the Court held that, disallowance cannot exceed the exempt income. No substantial question of law. (AY. 2015-16)

PCIT (Central) v. Affluence Commodities (P.) Ltd. (2024) 471 ITR 252 /161 taxmann.com 476 (Guj) (HC)

PCIT v. Devata Tradelink Ltd. (2024) 297 Taxman 86 (Delhi) (HC)

Dy. CIT v. Jite Shipyard Ltd. (2024) 297 Taxman 476 (Delhi)(HC)

S. 14A : Disallowance of expenditure-Exempt income-Interest-No exempt income –Income of an assessee has both taxable and non-taxable elements, it would be principle of apportionment of expenditure relating to non-taxable income which would have to be identified for purpose of making disallowance under section 14A-No disallowance can me made-Explanation in S. 14A came to be inserted by virtue of the 2022 Act, w. e. f. 1st April, 2022 will apply in relation to the asst. years. 2022-23 and subsequent assessment years. [S. 260A, R. 8D] 348

Held that on a plain textual reading of S. 14A, it is found that the provision mandates that no deduction would be allowed in respect of expenditure that may be incurred for the purposes of earning income which would ultimately not form part of total income under the Act. The expenditure which is thus identified is that which may have been expended for the purposes of earning income which is otherwise not liable to be included in total income and is thus viewed as exempt. The expenditure which is spoken of is thus in respect of income which is specified in S. 10 and which stands placed in Chapter III. S. 14A, on the other hand, is placed in Chapter IV and which contains various provisions relating to computation of total income. Both sub-ss. (1) and (2) of s. 14A, use the expression "income which does not form part of the total income" in conjunction with the expenditure that may be incurred by an assessee in relation thereto. The two expressions noted above are coupled together by the phrase "in relation to". Explanation in S. 14A came to be inserted by virtue of the 2022 Act, w. e. f. 1st April, 2022 will apply in relation to the asst. years. 2022-23 and subsequent assessment years. Income of an assessee has both taxable and non-taxable elements, it would be principle of apportionment of expenditure relating to non-taxable income which would have to be identified for purpose of making disallowance under section 14A.

PCIT v. Alchemist Ltd. (2024) 167 taxmann.com 284 /341 CTR 668 / 242 DTR 489 (Delhi) (HC)

PCIT v. Uno Minda Ltd (2024) 167 taxmann.com 284 / 341 CTR 668 / 242 DTR 489 (Delhi)(HC)

S. 14A : Disallowance of expenditure-Exempt income-Binding precedent-Tribunal is not justified in holding that the judgment of Delhi High Court is not binding upon it-Said conduct of the members of the Tribunal is liable to be condemned-Explanation inserted to section 14A vide Finance Act, 2022 is prospective in nature. [S. 254(1), R. 8D] 349

Court held that in view of the Memorandum Explaining the Provisions in the Finance Bill, 2022 and various decisions rendered by the different High Courts, it is clear that the Explanation inserted to s. 14A vide Finance Act, 2022 is applicable prospectively. Order passed by the Tribunal holding that insertion of Explanation to s. 14A is clarificatory and thereby retrospective in nature, is erroneous in law. Tribunal having held in one case that decision of Delhi High Court is binding on it, same Bench of the Tribunal was not justified in holding that the judgment of Delhi High Court is not binding upon it-Said conduct of the members of the Tribunal is liable to be condemned. (AY. 2009-10, 2012-13 to 2014-15)

Williamson Financial Services Ltd. v. CIT (2024) 341 CTR 359 / 242 DTR 537 / 301 Taxman 102 (Gauhati)(HC)

350 **S. 14A : Disallowance of expenditure-Exempt income-Own interest free funds-Investment in its subsidiaries-No disallowance of interest expenditure can be made. [R. 8D]**

The High Court in case of *CIT v. Suzlon Energy Ltd. [2013] 33 taxmann.com 151/215 Taxman 272/354 ITR 630 (Guj)(HC)* has held that where the assessee had own interest free funds many times over the investment made in its subsidiaries and further, there was no direct nexus between the interest bearing borrowed funds and such investment, no disallowance of interest expenditure could be made under section 14A. Order of Tribunal is affirmed. (AY. 2015-16)

PCIT v. Kalpataru Power Transmission Ltd. (2024) 301 Taxman 427 (Guj.)(HC)

351 **S. 14A : Disallowance of expenditure-Exempt income-Interest free funds-Presumed that investments were made out of interest-free fund-Disallowance cannot be made. [S. 260A, R. 8D]**

Dismissing the appeal of the Revenue the High Court held that where both interest-free and interest bearing funds were available with assessee, it was to be presumed that investments were made out of interest-free fund. Order of Tribunal deleting the addition. is affirmed. (AY. 2011-12)

PCIT, Central v. Shapoorji Pallonji and Co. Ltd. (2024) 164 taxman.com 707 (Bom)(HC)

Editorial : SLP of Revenue is dismissed, PCIT, Central v. Shapoorji Pallonji and Co. Ltd. (2024) 300 Taxman 182 (SC)

352 **S. 14A : Disallowance of expenditure-Exempt income-Disallowance made voluntarily was more than exempt income-No further disallowance can be made. [S. 260A, R. 8D]**

Dismissing the appeal of the Revenue the Court held that where amount of disallowance made voluntarily by assessee was more than exempt income, No further disallowance can be made. Order of Tribunal is affirmed. (AY. 2014-15)

PCIT v. Coffee Day Enterprises Ltd. (2024) 165 taxxmann.com 328 (Karn)(HC)

Editorial : SLP of Revenue is dismissed on account of delay in filing of SLP. PCIT v. Coffee Day Enterprises Ltd. (2024) 300 Taxman 357 (SC)

353 **S. 14A : Disallowance of expenditure-Exempt income-Shares held as stock in trade-No disallowance can be made. [R. 8D]**

Court held that the Tribunal had correctly appreciated the fact that the assessee was a nationalised bank and deleted the disallowance holding that the shares were held as stock-in-trade and that the provisions of section 14A had no applicability. (AY. 2013-14 to 2015-16)

PCIT v. Oriental Bank Of Commerce Ltd. (2024) 464 ITR 563 (Delhi)(HC)

354 **S. 14A : Disallowance of expenditure-Exempt income-Not recording of satisfaction-Order of Tribunal deleting the addition is affirmed. [S. 10(34), 45, 260A, R. 8D]**

Dismissing the appeal of the Revenue the Court held that most fundamental requirement under section 14A and rule 8D is that Assessing Officer should record his dissatisfaction with correctness of claim of assessee in respect of expenditure and to arrive at such dissatisfaction, he should give cogent reasons. On the facts the Assessing Officer had

not recorded his satisfaction as to why he was not satisfied with claim of assessee in respect of expenditure in relation to exempt income in form of dividend and long-term capital gain, impugned disallowance made under section 14A by applying rule 8D was to be deleted. Order of Tribunal is affirmed. (AY. 2008-09)
PCIT v. Tata Capital Ltd. (2024) 298 Taxman 714 / (2025) 475 ITR 559 (Bom.)(HC)

S. 14A : Disallowance of expenditure-Exempt income-Borrowed capitals-Investing in shares to earn income from dividend-Expenditure incurred on interest paid on borrowed funds is not allowable as deduction. [S. 10(33), 36(1)(iii), 260A] 355
Assessee claimed deduction on interest paid on borrowed capitals for investing in shares of his two companies. Assessing Officer disallowed interest, by holding that purpose of investment was to earn income in form of dividend from two companies and same being not taxable, therefore, deductions were not permissible for expenses related to income not forming part of total income under Act. CIT(A) and Tribunal affirmed the disallowance. On appeal the Tribunal held that since dividend income from two companies was not taxable, in that scenario expenditure incurred on interest paid on funds borrowed in respect of investment in shares of two operating companies was hit by section 14A inasmuch as dividend received on such shares did not form part of total income. Therefore, interest paid on borrowings is not allowable as deduction. Followed *Maxopp Investment Ltd v. CIT (2018) 254 Taxman 325 / 402 ITR 640 (SC)*. (AY. 1998-99)
Mahesh K. Mehta v. Dy. CIT (2024) 298 Taxman 238 / 471 ITR 237 (Bom.)(HC)
Editorial : SLP is dismissed, Mahesh K. Mehta v. Dy. CIT (2024) 300 Taxman 600/469 ITR 397 (SC)

S. 14A : Disallowance of expenditure-Exempt income-No reasons recorded-Order of Tribunal is affirmed. [R. 8D] 356
Held that the Assessing Officer made disallowances under section 14A read with rule 8D, but there was no reason recorded by him, as to why he was not satisfied with the claim made by the assessees. Further, there was no examination by the Assessing Officer about the nature of investment by the assessees in their subsidiary companies and expenditure incurred by them. The Commissioner (Appeals) and the Tribunal had pointed out certain errors committed by the Assessing Officer, accepted the contentions raised by the assessees and directed the Assessing Officer to modify the disallowances under section 14A. Such course adopted by the appellate authorities was justified. (AY. 2003-04 to 2014-15)
Shriram Transport Finance Co. Ltd. v. ITO (OSD) (2024)460 ITR 66 (Mad)(HC)

S. 14A : Disallowance of expenditure-Exempt income-Depreciation-Rule of consistency followed-Appeal of Revenue is dismissed. [S. 32, R. 8D] 357
On appeal by revenue, the Delhi High Court considered four issues: A. whether the disallowance calculated under rule 8D should only take into account investments made by the assessee in order to earn exempt income, B. whether the addition made by the Assessing Officer was to be deleted in cases where the Assessing Officer had disallowed a portion of an expense because it was unrelated to the assessee's business but failed to specify which expenses were not incurred for that purpose. C. Whether computer

software that is essential to the operation of hardware can be depreciated at a rate of sixty percent and D) Is the money spent developing a website considered a revenue expenditure. The Hon'ble Delhi High Court observed that with respect to question 'A', the issue is covered by *Cargo Motors (P.) Ltd. v. Dy. CIT [2023] 291 Taxman 208/453 ITR 554 (Delhi)* wherein the coordinate bench has ruled that the disallowance calculated under Rule 8D of 1962 Rules should factor in only investments made by an assessee to earn exempt income. With respect to the second issue, the same was covered by the decision of a coordinate bench in same as also covered by *Pr. CIT v. Times Internet Ltd. [2023] 156 taxmann.com 577 (Delhi)(HC)*. With respect to question 'C' and 'D', the same were covered by decisions of the CIT(A) taken in previous assessment years, and the disallowance was deleted. Hence, it was held that rule of consistency should apply and accordingly appeal of Revenue is dismissed. (AY. 2012-13)
P CIT v. Times Internet Ltd [2023] 156 taxmann.com 577 / (2024)) 296 Taxman 547 (Delhi)(HC)

358 **S. 14A : Disallowance of expenditure-Exempt income-Shares held as stock in trade-Dividend income earned-Order of Tribunal deleting the addition is affirmed. [S. 260A]**
The assessee, a housing finance company earned exempt income from shares held as stock in trade. The Supreme Court has in Maxopp's case conclusively held that in cases where shares are held by assessee as stock-in-trade, the dividend earned on the said shares is incidental and would not attract the provisions of section 14A of the Act. (Followed: *Maxopp Investment Ltd. v. CIT (2018) 91 taxmann.com 154/ 254 Taxman 325 / 402 ITR 640 / (2018) 15 SCC 523 and South Indian Bank Ltd. v. CIT (2021) 130 taxmann.com 178 / 283 Taxman 178 / 438 ITR 1 (SC)* (AY. 2010-11)
PCIT v. PNB Housing Finance Ltd. (2023) 146 taxmann.com 445 / (2024) 461 ITR 476 (Delhi) (HC)
Editorial : SLP dismissed PCIT v. PNB Housing Finance Ltd., (2024) 297 Taxman 229 (SC)/[2024] 461 ITR 481 (SC)

359 **S. 14A : Disallowance of expenditure-Exempt income-Interest free funds-Not recorded dissatisfaction-Addition is deleted. [R. 8D]**
Held that interest-free funds of the assessee being in excess of the investments made by it which are generating tax-free income, and the AO having not recorded his dissatisfaction under S. 14A(2) before invoking R. 8D, the disallowance made by the AO under s. 14A is not sustainable in law. (AY. 2018-19, 2020-21)
Urmin Products (P) Ltd. v. Dy. CIT (2024) 231 TTJ 100 (UO) (Ahd)(Trib)

360 **S. 14A : Disallowance of expenditure-Exempt income-Not possible to maintain separate books of account-The AO is directed to restrict the disallowance on a reasonable basis. [R. 8D(2)(iii)]**
Tribunal held that on the facts of the matter it is not possible to maintain separate books of account. The AO is directed to restrict the disallowance on a reasonable basis. (AY. 2010-11,2011-12)
ITC Ltd v. ACIT (2024) 230 TTJ 921 (Kol)(Trib)

S. 14A : Disallowance of expenditure-Exempt income-Apportionment of expenses-Demat charges-Interest expenses-Disallowance under R. 8D(2)(iii) is to be restricted to 0. 5 per cent of the average value of investment which yielded exempt income in terms of statutory formula-The suo motu disallowance, no basis has been given by the assessee for making such ad hoc disallowance-AO shall be guided by the statutory formula. [R. 8D(2)(ii)] 361

Held that the Demat charges which are in the nature of direct expenses, same are disallowable under r. 8D(2)(i). As regards interest disallowance is concerned since assessee's own funds (share capital plus reserves) exceed the investment which yielded dividend income, disallowance of interest expenditure under r. 8D(2)(ii) is not warranted. Disallowance under R. 8D(2)(iii) is to be restricted to 0. 5 per cent of the average value of investment which yielded exempt income. (AY. 2012-13)

Modi Rubber Ltd. v. DCIT (2024) 228 TTJ 848 / 236 DTR 145 (Delhi)(Trib)

S. 14A : Disallowance of expenditure-Exempt income-Suo motu disallowance-Disallowance is restricted to amount of exempt income. [R. 8D] 362

Held that disallowance cannot exceed the exempt income. (AY. 2008-09, 2009-10)

Cadila Pharmaceuticals Ltd. v. ACIT (2024)115 ITR 428/ 162 taxmann.com 229 (Ahd)(Trib)

S. 14A : Disallowance of expenditure-Exempt income-No exempt income-Disallowance cannot be made. [R. 8D 363

Held that the assessee had not earned any exempt income. Therefore, no disallowance under section 14A read with rule 8D of the Income-tax Rules, 1962, could be made in absence of any exempt income earned during the year. (AY. 2010-11)

ACIT v. Uniparts India Ltd(2023) 150 taxmann.com 142 / (2024)115 ITR 473 (Delhi)(Trib)

S. 14A : Disallowance of expenditure-Exempt income-Disallowance cannot exceed exempt income-Addition to book profit is deleted. [S. 115JB, R. 8D] 364

Held that disallowance cannot exceed exempt income. Addition to book profit is deleted. (AY. 2010-11)

Cadila Pharmaceuticals Ltd. v. ACIT (2024) 115 ITR 51 ((SN)/ 164 taxmann.com 52 (Ahd) (Trib)

Dy. CIT v. Laxmi Energy and Foods Ltd. (2024)114 ITR 88 (SN)(Chd)(Trib)

Plaza Agencies P. Ltd. v. Dy. CIT (2024)113 ITR 71 (SN)(Bang)(Trib)

S. 14A: Disallowance of expenditure-Exempt income-Investment in subsidiaries not yielding dividends-Own interest-free funds-No disallowance of expenditure. [R. 8D] 365

That the Commissioner (Appeals) had given a categorical finding that the assessee's own interest-free funds were far in excess of the investments made in the firm, yielding exempt income and, accordingly, no disallowance was called for, and that since no exempt income was earned by the assessee during the year under consideration, there was no question of disallowance under section 14A. The order of the Commissioner (Appeals) was upheld (AY. 2009-10, 2010-11, 2011-12)

Intas Pharmaceuticals Ltd. v. ACIT (2024)114 ITR 434 (Ahd)(Trib)

366 **S. 14A : Disallowance of expenditure-Exempt income-Book profit-No disallowance can be made-Amendment disallowance of expenditure irrespective of receipt of exempt income-Not Retrospective-Order of CIT(A) is affirmed. [S. 115JB, R. 8D]**

Held that no addition can be made while computing book profit in respect of disallowance under S. 14A. The Tribunal also held that Amendment disallowance of expenditure irrespective of receipt of exempt income is not retrospective. Order of CIT(A) is affirmed. (AY. 2017-18)

DyCIT v. Welspun Steel Ltd. (2024)114 ITR 107 /229 TTJ 485(Mum)(Trib)

367 **S. 14A : Disallowance of expenditure-Exempt income-Profits earned from firm-Recording dissatisfaction-CIT(A) is not justified in disallowing the disallowance-Company-Book profits-Disallowance is not required to be made. [S. 10(2A),10(34), 115JB(2), R. 8D]**

Held that the assessee had earned profit from the two firms which was exempt from tax under section 10(2A) of the Act. The Assessing Officer had rightly invoked section 14A of the Act and computed the expenditure on the assessee's exempt income by resorting to rule 8D of the Rules after recording his dissatisfaction, which was the "sine qua non" before invoking rule 8D(2). The Commissioner (Appeals) had erred in deleting the disallowance. The Tribunal also held the Commissioner (Appeals) was right in holding that the adjustment of disallowance under section 14A of the Act read with rule 8D of the Rules was not required to be made in the book profits for minimum alternate tax liability by resorting to section 115JB of the Act. (AY. 2017-18)

Dy. CIT v. Radha Madhav Investments P. Ltd. (2024)113 ITR 76 (SN)(Mum)(Trib)

368 **S. 14A : Disallowance of expenditure-Exempt income-Interest-Surplus fund-Order of CIT(A) deleting the disallowance is affirmed. [R. 8D]**

Held that assessee made investment in shares of company out of interest free surplus funds available with assessee and no exempt income was earned, disallowance made under section14A read with rule 8D was rightly deleted by Commissioner (Appeals). (AY. 2013-14)

DCIT v. Stylam Industries Ltd. (2024) 209 ITD 75 (Chd) (Trib.)

369 **S. 14A : Disallowance of expenditure-Exempt income-Sufficient interest free funds-Disallowance is not justified. [R. 8D]**

Held that the assessee had sufficient interest free funds. The formula provided in R. 8D was to be applied only when the assessee's calculation of disallowance appeared to the Assessing Officer to be incorrect with regard to the assessee's books of account. As a result, the disallowance made by the Assessing Officer under section 14A in accordance with Rule 8D is not sustainable hence deleted. (AY. 2018-19)

Axis Bank Ltd. v. Asst. CIT (2024)112 ITR 28 (Ahd)(Trib)

S. 14A : Disallowance of expenditure-Exempt income-Voluntary disallowance is exceeding actual exempt income-Disallowance is deleted. [R. 8D] 370
Held that the voluntary disallowance surpasses the actual exempt income, no further disallowance under section 14A read with rule 8D of the Income-tax Rules, 1962. Disallowance is deleted. (AY. 2017-18)
Bhartiya International Ltd. v. Dy. CIT (2024)112 ITR 207/ 227 TTJ 897/158 taxmann.com 239 (Delhi)(Trib)

S. 14A : Disallowance of expenditure-Exempt income-Suo motu disallowance-Deletion of disallowance is justified. [R.8D] 371
Order of CIT(A) deleting the disallowance is affirmed. (AY. 2015-16 to 2017-18)
City Union Bank Ltd. v. Dy. CIT (2024) 112 ITR 337 /229 TTJ 139 (Chennai)(Trib)

S. 14A : Disallowance of expenditure-Exempt income-Disallowance is to be restricted to exempt income earned and only investments which had actually earned dividend to be considered for disallowance. [R. 8D(2)(iii)] 372
Held, that the Assessing Officer has to make disallowances based on the settled position of law that the disallowance under section 14A is to be restricted only to the extent of exempt income earned and the investments to be considered for making disallowances were only on those investments which had actually earned the dividend. The Assessing Officer was directed to re-work disallowance under section 14A under rule 8D(2)(iii) by adopting only those investments which had yielded exempt income. (AY. 2008-09 to 2012-13)
Crisil Ltd. v. Add. CIT (2024)112 ITR 56 (Mum)(Trib)

S. 14A : Disallowance of expenditure-Exempt income-Administrative expenses-Investment made from assessee's own Funds-Matter remanded. [S. 115J, R. 8D] 373
The Tribunal held that the Assessing Officer to verify whether current liabilities and provisions not reduced from opening and closing stock of current assets to extent borrowings used for business and whether investment made from assessee's own Funds. Matter remanded. (AY. 2011-12)
Gujarat State Fertilizers and Chemicals Ltd. v. Dy. CIT (2024) 110 ITR 641 (Ahd)(Trib)

S. 14A : Disallowance of expenditure-Exempt income-Sufficient interest bearing funds-Suo moto made disallowance-Addition is deleted. [R. 8D(2)(ii), 8D(2)) (iii)] 374
Tribunal held that interest disallowance is concerned the ITAT observed that sufficient interest free funds were available with the Assessee to make the investments. Also there was no finding of the department that interest bearing funds have been applied for the purpose of making investments. Therefore, following the decision in case of Reliance Utilities & Power Ltd. reported in [2009] 313 ITR 340 (Bombay), disallowance under Rule 8D(2)(ii) was deleted. Insofar as disallowance under Rule 8D(2)(iii) is concerned, in one of the AYs where the assessee has suo moto made a disallowance and mentioned it in the audit report, the same was deleted by the ITAT. (*CIT v. Reliance Utilities & Power Ltd. [2009] 313 ITR 340 (Bom)(HC)* followed) (AY. 2013-14, 2014-15, 2016-17, 2017-18)
Apeejay P. Ltd. v. Dy. CIT (2024) 111 ITR 231 (Kol.) (Trib.)

375 **S. 14A : Disallowance of expenditure-Exempt income-No dividend income earned from investments-No disallowance can be made-The amendment by the Finance Act, 2022 is prospective in nature. [R. 8D]**

Held that the amendment by the Finance Act, 2022, by which a non obstante clause and Explanation were inserted in section 14A of the Act to the effect that the section shall apply even if no exempt income has accrued or arisen or has been received during the year, was prospective and will apply in relation to the assessment year 2022-23 and subsequent assessment years. When no dividend income is earned from investments, no disallowance can be made. (AY. 2013-14)

Lakozy Motors P. Ltd. v. Dy. CIT (2024)110 ITR 19 (SN)(Mum)(Trib)
Xchanging Technology Services India P. Ltd. v. ACIT (2024)110 ITR 52 (SN)(Delhi)(Trib)
Unilever Industries (P.) Ltd v. Dy. CIT (2024) 205 ITD 212 (Mum)(Trib)

376 **S. 14A : Disallowance of expenditure-Exempt income-Interest-Own fund were much higher than investments that yield exempt income-Order of CIT(A) deleting the addition is affirmed. [R. 8D(2)(ii)]**

Dismissing the appeal of the Revenue the Tribunal held that assessee's own fund were much higher than investments that yield exempt income, Commissioner (A) had rightly deleted addition made by Assessing Officer on account of interest expenditure. (AY. 2012-13)

ACIT v. Doshion Veolia Water Solution (P.) Ltd. (2024) 207 ITD 801 (Mum) (Trib.)

377 **S. 14A : Disallowance of expenditure-Exempt income-Failure to record objective dissatisfaction-Not examined the working submitted by assessee-Disallowance is deleted. [R. 8D]**

Held, that the Assessing Officer can resort to the provisions of section 14A(2) and rule 8D only if he is not satisfied with the correctness of claim of expenditure made by the assessee ; or the claim made by the assessee that no expenditure has been incurred. Hence, arriving at a satisfaction as to the correctness of the claim of expenditure was sine qua non for resorting to the provisions of rule 8D. The Assessing Officer did not refer to the workings furnished by the assessee in this regard. For arriving at the dissatisfaction over the correctness of the expenditure claimed by the assessee, the Assessing Officer had to examine the workings furnished by the assessee vis-a-vis the accounts, find fault therein. Addition is deleted (AY. 2017-18, 2018-19)

Dy. CIT v. Reliance Industries Ltd. (2024) 109 ITR 180 (Mum)(Trib)
Asian Paints Ltd. v. ACIT (2024) 205 ITD 680 (Mum) (Trib)
Leela Devi Sankhlecha (Smt.) v. ITO [2024] 109 ITR 260 (Jodhpur) (Trib)

378 **S. 14A : Disallowance of expenditure-Exempt income-Suo motu disallowance-Additional disallowance cannot be made by general remarks without satisfying himself as to correctness of disallowance-Addition is deleted. [R. 8D]**

Held that the Assessing Officer had made general remarks, such as how investments could not be managed without monitoring and research. This approach of the Assessing Officer completely overlooking the detailed analysis and allocation of the assessee and without examining them could not be upheld. It is imperative that the Assessing Officer

record his satisfaction on the claim made by the assessee having regard to the accounts. It was also seen that about ninety-seven per cent. of the investments were made in group companies as strategic investments. Thus, the remarks of the Assessing Officer that expenses are incurred on market research were not applicable on the facts of the case. The disallowance was deleted. (AY. 2019-20)
Tata Steel Ltd. v. Dy. CIT (2024)109 ITR 18 (Mum) (Trib)

S. 14A : Disallowance of expenditure-Exempt income-No exempt income-No disallowance can be made. [R. 8D] 379
Held that when no exempt income during the year, no disallowance can be made. (AY. 2012-13)
Indowind Energy Ltd. v. Dy. CIT (2024)109 ITR 68 (SN)(Chennai)(Trib)
DCIT v. Adani Mining (P.) Ltd. (2024) 204 ITD 269 (Ahd) (Trib.)
ACIT v. Gold Rush Sales and Service Ltd. (2024) 204 ITD 421 (Kol) (Trib.)
Asst. CIT v. Sahara India Financial Corpn. Ltd. [2024] 109 ITR 33 (SN) (Delhi) (Trib)
Intas Pharmaceuticals Ltd. v. ACIT (2024)114 ITR 546 (Ahd)(Trib)

S. 14A : Disallowance of expenditure-Exempt income-Rule 8D can be applied only in respect of investment which actually yielded dividend income during year. [R. 8D] 380
Held that rule 8D, could be applied only in respect of investment which actually yielded dividend income during year. Therefore, Commissioner (Appeals) rightly directed Assessing Officer to recompute disallowance under section 14A in accordance with Rule 8D only with reference to investments which actually yielded dividend income during year. (AY. 2008-09)
Himatsingka Seide Ltd. v. DCIT (2024) 206 ITD 371 (Kol) (Trib.)

S. 14A : Disallowance of expenditure-Exempt income-Interest free funds-Investment in Securities and Joint ventures-Owned interest free funds were much higher than investments made by assesse. [R. 8D(2)(b)] 381
Held that the assessee had invested own interest free funds in securities/Joint Ventures which yield exempt income, no disallowance under section 14A read with rule 8D(2)(b) is warranted, as available owned interest free funds with assessee were much higher than investments made by assessee which yield exempt income. (AY. 2007-08, 2008-09)
ACIT (OSD) v. M. S. Khurana Engineering Ltd. (2024) 206 ITD 741 (Ahd) (Trib.)

S. 14A : Disallowance of expenditure-Exempt income-Not earned any exempt income, no disallowance can be made-Employee's contributions (PF/ESI)-Payment was made within the period of grace period of five days-No disallowance can be made-Matter remanded. [S. 36(1)(va), R. 8D] 382
Where assessee had not earned any exempt income, no disallowance under section 14A was required to be made. Employee's contributions (PF/ESI). Payment was made within the period of grace period of five days. No disallowance can be made. Matter remanded. (AY. 2013-14)
Strides Pharma Science Ltd. v. DCIT (2024) 205 ITD 421 (Mum) (Trib.)

383 **S. 17(2) : Salary – Perquisite – Employer's grant of interest-free or concessional loans constitutes a 'fringe benefit' and 'perquisite' – Rule 3(7)(i) valid – Not excessive delegation – Benchmarking with SBI PLR not arbitrary. [S. 17(2)(viii), Rule 3(7)(i), Art. 14, 136]**

The employees' associations challenged before the High Courts the constitutional validity of Rule 3(7)(i), which prescribed valuation of perquisite on interest-free or concessional loans given by employers by adopting the rate of interest charged by the State Bank of India for similar loans. The High Courts upheld the rule, holding that it provided a definite method of valuation and did not treat unequals as equals, since the effect differed across employees based on their income levels and interest rates. On appeal, the Supreme Court held that under section 17(2)(viii), CBDT validly framed Rule 3(7)(i), which treats interest-free or concessional loans as 'fringe benefit'/'perquisite' and prescribes the method of valuation by adopting SBI's benchmark rate. Such prescription is neither excessive delegation nor arbitrary under Article 14. The Court clarified that 'perquisite' is understood in common parlance as a benefit incidental to employment and in addition to salary, and interest-free/concessional loans clearly fall within that scope. Accordingly, Rule 3(7)(i) was upheld as intra vires, and the appeals were dismissed affirming the decisions of the Madras and Madhya Pradesh High Courts.

All India Bank Officers' Confederation v. Regional Manager, Central Bank of India (2024) 299 Taxman 93 / 464 ITR 286 / 338 CTR 505 (SC)

Federal Bank Staff Union v. UOI (2024) 299 Taxman 93 / 464 ITR 286 / 338 CTR 505 (SC).

Editorial : All India Punjab National Bank Officer's Association v. Chairman-cum-Managing Director Punjab National Bank (2010) 190 Taxman 221/ 321 ITR 324 (MP) (HC)/ All India Union Bank Officers Federation v. UOI (2016) 240 Taxman 92/ 385 ITR 114 (Mad)(HC), affirmed.

384 **S. 17(2) : Salary-Perquisite-Employees stock purchase scheme-Lock in period-Shares which are subject to a lock-in stipulation and could not be sold in the open market owing to a complete embargo on the sale of those shares-The FMV could not have been recognized to exceed the face value of the shares. [S. 2(22B), 15, 17(2)(iiia), 260A]**

Dismissing the appeal of the Revenue the Court held that the AO is not justified in holding that although the assessee had been allotted shares at a concessional rate of Rs. 15 per share, the market price as quoted at the relevant time stood at Rs. 49. 45 and therefore the difference between the two figures, namely Rs. 34. 45 per share, is liable to be taxed as perquisite in terms of s. 17(2)(iiia); in light of the restriction with respect to marketability and tradability of the stock in question, the FMV could not have been recognized to exceed the face value of the shares

CIT v. Ravi Kumar Sinha (2024)165 Taxmann.com 472 / 341 CTR 185 / 243 DTR 145 (Delhi)(HC)

S. 17(2) : Salary-Perquisite-Stock options were merely held by assessee and same had not been exercised till date, same would not constitute income chargeable to tax in hands of assessee as none of contingencies specified in section 17(2)(vi) had occurred-Payment in question was not linked to employment, rather it was a onetime voluntary payment to all option holders of ESOP, compensation would not tantamount to perquisite under section 17(2)(vi) of the Act. [S. 17(2)(vi), 197, Art. 226] 385

Assessee, an ex-employee of a company, FIPL which was wholly owned subsidiary of Flipkart (FPS), was granted certain stock options by FPS under Employee Stock Option Plan (ESOP)). Thereafter, FPS announced disinvestment of its wholly owned subsidiary. Pursuant to said disinvestment value of stock options fell. Assessee received compensation towards loss in value of options. Assessee filed an application under section 197 seeking 'Nil' deduction at source certificate on deduction of TDS on said compensation by FPS. Assessing Officer rejected said application on ground that amount received was linked to ESOPs and would be in nature of perquisite under section 17(2)(vi). The Assessing Officer rejected the application under section 197 of the Act. On writ allowing the petition the court held that the assessee had not exercised his vested right with respect to stock option under ESOP. Since stock options were merely held by assessee and same had not been exercised till date, same would not constitute income chargeable to tax in hands of assessee as none of contingencies specified in section 17(2)(vi) had occurred. On facts since payment in question was not linked to employment, rather it was a onetime voluntary payment to all option holders of ESOP, compensation would not tantamount to perquisite under section 17(2)(vi) of the Act. (AY. 2023-24)

Sanjay Baweja v. Dy. CIT (2024) 299 Taxman 313 /341 CTR 376 / 241 DTR 145 (Delhi) (HC)

S. 17(3) :Salary-Profits in lieu of salary-Ex-gratia compensation-After termination-Not taxable as profits in lieu of salary-Appellate Tribunal-Powers-Departmental representative is not permitted to set up an altogether a new case [S. 15, 254(1)] 386

Held that as the payment of ex gratia compensation was voluntary in nature without there being any obligation on the part of employer to pay further amount to the assessee in terms of any service rules, the payment would not amount to compensation in terms of section 17(3)(i) of the Act. There was no agreement between the assessee and his employer under which the payment was made. Order of CIT(A) deleting the addition is affirmed. The Tribunal also held that the Departmental representative is not permitted to set up an altogether a new case with respect to the applicability of section. 17(3)(iii) of the Act. Referred, *Mahindra and Mahindra Ltd v. Dy. CIT(2009) 313 ITR 263 (A. T) (Trib)(SB)* (AY. 2009-10)

ITO v. Avirook Sen (2024)111 ITR 78 (SN)/ 230 TTJ 132 (Delhi)(Trib)

S. 18 : Interest on securities-Banks-Interest received at time of sale of securities-Assessable as interest on securities and not as income from business. [S. 28(i), 136] 387

Held that interest received at time of sale of securities is assessable as interest on securities and not as income from business. (AY. 1983-84, 1984-85, 1987-88)

CIT v. Citi Bank N. A. (No. 7) (2024) 469 ITR 417 (SC)

Editorial: CIT v. Citi Bank N. A (ITR. No. 265 of 1997 dt. 10-4-2003)

388 **S. 22 : Income from house property-Income from business-Letting out property – Business of letting or subletting of properties-Income assessable as income from house property-Rule of consistency should be applicable to tax proceedings. [S. 24, 28(i)]**
Assessee is engaged in business of hiring and leasing of properties. It declared an income from a self-owned property as income from house property. The assessee also declared rental income received from sub-letting of four other properties not owned by assessee, as income from business. Assessing Officer assessed the entire rental income as income from business. CIT(A) affirmed the view of the AO. On appeal Tribunal held that in respect of properties owned by the assessee, the assessee has correctly has offered the income as income from house property. On appeal by the Revenue the court held that even if assessee was to be in business of letting or subletting of properties and deriving income therefrom, there was no embargo on assessee from accounting income received by it, from property owned by assessee as Income from house property and at same time, categorizing rental income from other properties not of assessee's ownership under the head Income from business. Court applied the Rule of constancy and affirmed the order of the Tribunal. (AY. 2008-09, 2009-10, 2010-11)
PCIT v. Banzai Estates (P.) Ltd [2024] 165 taxmann.com 412 (Bom)(HC)

389 **S. 22 : Income from house property-Notional income-Constitutional validity-Notice is issued to Attorney General of India. [S. 23(5)(1), Art. 226]**
Writ petition is filed challenging constitutional validity of section 22 read with sub-section (1) and sub-section (5) of section 23 of the Act. Notice is issued to Attorney General of India. (WP (L) No.31328 of 2023 dt. 30-1-2024)
Rabbani S. Khan v. Dy. CIT (2024) 297 Taxman 295 (Bom.)(HC)

390 **S. 22 : Income from house property-Annual value-Stock in trade-Construction business-Operation of sub-section (5) of section 23 inserted by Finance Act, 2017 is not made retrospective and, thus, annual value/deemed rental income of property held as stock-in-trade can be calculated and shall be chargeable to income tax only with effect from assessment year 2018-19 and not prior to that. [S. 23(4), 23(5)]**
Assessee is a firm engaged in construction activities as a promoter and builder. The assessee is holding closing stock of 9 units/flats at end of assessment year and out of these 9 flats, rental income was shown for 1 flat only. The Assessing Officer did not accept reply of assessee and determined deemed rental income as per provisions of section 22 read with section 23(4) and added income of assessee. CIT(A) up held the order of the AO. On appeal the Tribunal held that it is only from assessment year 2018-19 that a new section 23(5) was inserted which permits Assessing Officer to calculate deemed rental income of property held as stock-in-trade even if such property was not let during whole or any part of previous year. Tribunal held that when operation of sub-section (5)of section 23 is not made retrospective, annual value/deemed rental income of property held as stock in trade can be calculated and shall be chargeable to income tax only with effect from assessment year 2018-19 and not prior to that. (AY. 2016-17)
Varun Developers v. ACIT (2024) 209 ITD 299 (Pune) (Trib.)

S. 22 : Income from house property-Business of all kinds of engineering products including financing, manufacturing, selling-Rental income assessable as income from house property and not as business income. [S. 28(i), 263] 391

Assessment of assessee was completed and Assessing Officer accepted stand of assessee that rental income was to be assessed as a house property Commissioner passed the revision order adjudicate the issue whether the rental income be assessed as business income. The AO assessed the income as income from business. CIT(A) affirmed the order of the AO. On appeal the Tribunal held that main objective of the assessee-company is to carry on business of all kinds of engineering products including financing, manufacturing, selling or in any other form. Since assessee had not declared any income for providing additional facilities to occupiers of premises and those aspects had not been considered by Assessing Officer in impugned assessment order therefore, rental income declared by assessee deserved to be assessed as a house property income and not as a business income. Rule of consistency is followed. (AY. 2014-15)

EMC Projects (P.) Ltd. v. DCIT (2024) 115 ITR 24 / 209 ITD 411 (Kol) (Trib.)

S. 22 : Income from house property-Form No 26AS-Revised by the deductor-Matter is remanded to verify factual claim. [Form No 26AS] 392

Assessing Officer having found that as per Form No. 26AS assessee had received much more rental income made addition of difference amount to its income. CIT(A) affirmed the addition. On appeal the Tribunal held that since entire basis of addition was erroneous facts reported in Form No. 26AS which assessee claimed to have revised and corrected, Assessing Officer was to be directed to verify factual claim of assessee and pass a speaking order. AY. 2017-18)

Agilent Technologies (International) (P.) Ltd. v. NFAC (2024) 205 ITD 551 (Delhi) (Trib.)

S. 23 : Income from house property-Annual value-Stock in trade-Notional value-Amendment is prospective. [S. 22, 23(5)] 393

Dismissing the appeal of the Revenue the Tribunal held that insertion of section 23(5) by the Finance Act, 2017 with effect from April 1, 2018, it is clear that for the computation of annual value of property held as stock-in-trade certain moratorium period had been given. However, the newly inserted provisions in section 23(5) were to be applicable only with effect from assessment year 2018-19 and not for the year under consideration. Order of CIT(A) is affirmed (AY. 2017-18)

Dy. CIT v. Neepa Real Estates P. Ltd. (2024)116 ITR 247 / 171 taxmann.com 56 (Mum) (Trib)

S. 23 : Income from house property-Annual value-Higher rent and lower security deposit-Matter remanded to Assessing Officer to determine annual lettable value and after giving an opportunity to assessee. [S. 22] 394

Held, that for the assessment year 2007-08 the Tribunal had restored the matter to the Assessing Officer. The Commissioner (Appeals) followed that order but instead of restoring the matter to the Assessing Officer, deleted the addition. The Commissioner (Appeals) does not have any power to remand the matter to the file of the Assessing Officer. The Assessing Officer had compared the rent received from D and then made

the addition. According to section 23 of the Income-tax Act, 1961, the annual value of let out property is to be determined on the basis of the sum for which the property is expected to be let out from year-to-year. Therefore, it had to be the market rate of the rent. As in the assessee's own case for earlier years the Tribunal had resorted the matter to the Assessing Officer to determine the annual lettable value, the matter was to be restored to the Assessing Officer for this year also, because he had compared the rent of the financial year 2010-11. (AY. 2014-15)
ACIT v. NRB Bearings Ltd. (2024)112 ITR 17 (SN)(Mum) (Trib)

395 **S. 23 : Income from house property-Annual value-Deemed let out-Two houses are occupied for self purposes-No notional rent is to be added. [S. 22]**
Assessee had 3 properties out of which 2 were claimed to be self-occupied and no actual/deemed rent was shown. Assessing Officer held that all premises were spacious and located in posh and active locality with reasonable annual rent values. Assessing Officer added deemed rent even though no actual rent was received. CIT(A) affirmed the order of the AO. On appeal the Tribunal held that since assessee had been using these houses for self-purposes, no notional rent had arisen and, thus, no addition could be made. (AY. 2017-18)
Jasmatbhai Nanubhai Vidiya v. DCIT (2024) 206 ITD 44 (Surat) (Trib.)

396 **S. 24 : Income from house property-Deductions-Interest on borrowed capital-Interest on housing loan-Let-out property-When the property is let out there is no maximum deduction on interest on borrowed capital Interest on housing loan allowable as deduction under section 24 for let-out property, based on bank certificate and consistent claims in previous years. [S. 22]**
The assessee claimed interest as deduction on housing loan for let out property, supported by bank certificate. CIT(A) disallowed the claim incorrectly stating loan was for renewal of already rented property. Interest on housing loan for let-out property fully deductible under section 24 without maximum limit. Tribunal held that interest on housing loan is deductible under section 24 when property is let out, supported by bank certificate and consistent claims in previous years. (AY. 2021-22)
Syeda Bibi Sadiqa. (Smt.) v. DCIT (2024) 207 ITD 543 (Bang) (Trib.)

397 **S. 24 : Income from house property-Deductions-Rental income-Let out portion of its house property-Assessable as income from house property and not as income from other sources-Entitle to statutory deduction @30% under section 24(a) of the Act. [S. 22, 24(a), 56]**
Assessing Officer treated rental income earned by assessee from let out portion of its house property as income from other sources. On appeal the Tribunal held that since ownership of house vested with assessee and hence assessee continued to be owner of part premises of House, rental income should be assessed only under head income from house property and assessee would be entitled for statutory deduction @30% under section 24(a) of the Act. (AY. 2005-06)
Piramal Enterprises Ltd. v. DCIT (2024) 205 ITD 636/116 ITR 261 (Mum) (Trib.)

S. 28(i) : Business income-Income from house property-Object of developing commercial properties-Rental income assessable as business income-SLP of revenue dismissed. [S. 22, Art. 136]. 398

Dismissing the appeal of the Revenue the High Court held that the main object of the assessee is business of constructing, owning, acquiring, developing, managing, running, hiring, letting out, selling out or leasing multiplexes, cineplexes, cinema halls, theatres, shops, shopping malls, etc., according to its memorandum and articles of association. The income was liable to be categorized as income derived from the shopping mall under the head of Income from business under section 28 of the Income-tax Act, 1961. Order of Tribunal is affirmed. In determining whether a particular income is income from house property or business income, in the case of *Sultan Brothers Pvt. L td. v. CIT (1964) 51 ITR 353 (SC)* the Supreme Court held that each case has to be looked at from the businessman's point of view to find out whether the letting was the doing of business or exploitation of the property of the owner. SLP of revenue dismissed. (AY. 2011-12,to 2014-15)

PCIT v. M. P. Entertainment and Developers Pvt. Ltd. (2024) 469 ITR 428 / (2025) 302 Taxman 361 (SC)

Editorial : PCIT v. M. P. Entertainment and Developers Pvt. Ltd. (2024)469 ITR 421 (MP)(HC)

S. 28(i) : Business income-Accrual of income-Banks-Interest on doubtful loans-Determined in accordance with Central Board of Direct Taxes Circular. [S. 21, 40A(5), 119] 399

Held, affirming the decision of the High Court, the Court held that salary and perquisites paid by the assessee-bank to its employees are to be apportioned under section 21 of the Income-tax Act, 1961 and the provisions of section 40A(5) would be made applicable only in respect of that portion of the salary and perquisite as is considered under section 28 of the Act. (AY. 1982-83)

CIT v. Bank of America (2024)469 ITR 406 (SC)

Editorial: Decision of Bombay High Court in CIT v. Bank of America (Bom)(HC)(ITR No. 81 of 1994 dt. 22-7-2023, Followed, CIT v. Citi Bank N. A. (No. 2 (2024) 469 ITR 398 (SC)

S. 28(i): Business income-Interest on securities-Business income-Business expenditure-Salaries and perquisites-Disallowance is to be restricted to expenditure apportioned under profits and gains of business or profession and not under head interest on securities-Precedent-Appeal of Revenue is dismissed. [S. 18, 20(1(i), 36, 37(1), 40A(5), Art. 136] 400

The High Court, following its earlier order in the case of the same assessee, which in turn followed in the case of British Bank of the *Middle East v. CIT (1998) 233 ITR 251 (Bom)(HC)* held that the interest received by the assessee on the sale of securities held by it, was assessable to tax under the head Interest on securities and not under the head Income from business on appeal, Court held that since admittedly the Department had neither filed any appeal against those judgments, nor raised or pleaded any of the

reasons spelt out by the court in *C. K. Gangadharan v. CIT (2008) 304 ITR 61 (SC)* nor made out just cause the appeals are dismissed. (AY. 1981-82)
CIT v. Citi Bank N. A. (No. 2) (2024)469 ITR 398 (SC)
Editorial : Citi Bank N. A. v. CIT (2003) 262 ITR 47 (Bom)(HC)

401 **S. 28(i): Business income-Interest on securities-Business income-Business expenditure-Salaries and perquisites-Disallowance is to be restricted to expenditure apportioned under profits and gains of business or profession and not under head interest on securities. [S. 18, 20(1(i), 36, 37(1), 40A(5),44C, Art. 136]**
Held that apportioning the deductible expenditure under section 20(1)(i), under the head Interest on securities in the case of banking companies, expenses admissible under sections 30, 31, 36 and 37 are not subject to restrictions imposed under sections 40A(3), 40A(5) and 44C of the Income-tax Act, 1961. CIT v. Citi Bank N. A. (NO. 2) (2024) 469 ITR 398 (SC). (AY. 1985-86, 1986-87) (AY. 1983-84, 1984-85, 1987-88) (AY. 1983-84, 1984-85, 1987-88)
CIT v. Citi Bank N. A. (NO. 3) (2024)469 ITR 403 (SC)
Editorial : CIT v. Citi Bank N. A ITR No. 191 of 1997 dt. 10-4-2003(Bom)(HC)
CIT v. Citi Bank N. A. (No. 4) (2024)469 ITR 410 (SC)
Editorial : CIT v. Citi Bank N. A (ITR No. 349 of 1995 dt. 5-3 2003 (Bom)(HC)
CIT v. Citi Bank N. A. (No. 5) (2024)469 ITR 414 (SC)
Editorial : CIT v. Citi Bank N. A. (ITA. No. 426 of 1998 dt. 10-4-2003
CIT v. Citi Bank N. A. (No. 6) (2024)469 ITR 416 (SC)
Editorial : CIT v. Citi Bank N. A (ITA No. 1 of 1988 dt. 5-3-2003, ITR No. 232 of 1996 dt. 22-7-2003)
CIT v. Citi Bank N. A. (No. 7) (2024)469 ITR 417 (SC)
Editorial: CIT v. Citi Bank N. A (ITR. No. 265 of 1997 dt. 10-4-2003)

402 **S. 28(i) : Business income-Income from house property-Object of developing commercial properties-Rental income assessable as business income. [S. 22, 260A].**
Dismissing the appeal of the Revenue the Court held that the main object of the assessee is business of constructing, owning, acquiring, developing, managing, running, hiring, letting out, selling out or leasing multiplexes, cineplexes, cinema halls, theatres, shops, shopping malls, etc., according to its memorandum and articles of association. The income was liable to be categorized as income derived from the shopping mall under the head of Income from business under section 28 of the Income-tax Act, 1961. Order of Tribunal is affirmed. In determining whether a particular income is income from house property or business income, in the case of *Sultan Brothers Pvt. L td. v. CIT (1964) 51 ITR 353 (SC)* the Supreme Court held that each case has to be looked at from the businessman's point of view to find out whether the letting was the doing of business or exploitation of the property of the owner (AY. 2011-12 to 2014-15)
PCIT v. M. P. Entertainment and Developers Pvt. Ltd. (2024)469 ITR 421 (MP)(HC)
Editorial : PCIT v. M. P. Entertainment and Developers Pvt. Ltd(2024) 469 ITR 428 (SC), SLP of Revenue is dismissed.

S. 28(i):Business income-Capital or revenue-Capital asset-Relinquishment in settlement agreement-Receipt on Arbitral Award-Difference between lease and licence-Trading and service agreement-No rights conferred except running hotel-Termination of agreement as result of settlement or compromise of all claims, counter-claims and disputes-Receipt on Arbitral Award on termination of agreement-Revenue receipt and not capital receipt. [S. 2(14), 4, 45, 260A, Indian Easement Act, 1882 S. 52] 403

Allowing the appeal the Revenue the Court held that under the operating agreement the assessee was authorised to run and operate hotel with all the employees, staff including managerial staff of ELEL Hotels and Investments Ltd. No right, title or interest of any kind was created by ELEL in favour of the assessee in any of the assets or properties of Hotels and Investment Ltd to carry on the commercial activity of operating the hotel Hotel SeaRock, ELEL was to get 23 per cent. of the gross turnover as licence fees, subject to some variations as provided in the agreement. Considering the terms of the licence operating agreement in its entirety, it was a trading contract. Accordingly the the sum received by the assessee by way of arbitral award from ELEL for relinquishment of right to operate its hotel SeaRock under the operating licence as mentioned in clause 3(n)(iv) of the consent terms was in terms of a trading contract to settle all disputes, claims and counter claims, and was not the transfer of any capital asset. The amount was part of the arbitral award received by the assessee to finally adjust, compromise and settle all disputes, allegations, claims, counter claims and case pending in courts arising out of or relating to operating licence agreement to run the hotel SeaRock. Held that from Classical Economists distinction point of view also, the receipts on arbitral award from ELEL being not for transfer or loss of any capital asset but at best was in lieu of circulating capital introduced to operate the hotel SeaRock and was a revenue receipt which arose from the trading contract of operating licence agreement. The assessee had no fixed capital investment to run the hotel SeaRock under the operating licence agreement and according to the agreement, the assessee had introduced some circulating capital to run it. Mere use of the word "relinquishment" in the settlement agreement and in the consent terms, without disclosing any rights in any capital asset or relinquishment of any rights in any capital assets, was not decisive rather established that the receipt was not capital receipt. Therefore, the receipt is revenue in nature consequently forming part of assessee's income. Order of Tribunal is set aside. (AY. 2006-07)

PCIT v. ITC LTD. (2024)467 ITR 465 (Cal)(HC)

S. 28(i) : Business income-Income from house property-Main object of company acquiring and holding property-Business of leasing and renting of property-Lease or rental income to be taxed as business income. [S. 22] 404

Held that according to the objects and memorandum of association of the assessees, HRP and CMDP, they were capable of being engaged in the business of land developing and were also builders, but the test was as to the actual business carried on by the assessees. According to the Department the buildings were handed over to the company in a finished mode and the company had also received advance for their buildings from the prospective purchasers, which the sale had not fructified by transfer of ownership

since the full consideration had not been rescinded, that the assessees had therefore let the building out for rent and that the rental income was not a business income under section 28 but income from house property under section 22. The Assessing Officer had found the specific object from the memorandum of association, that the assessees had held the buildings as stock-in-trade for more than 20 years. That though there were many objects in the memorandum of association, the Assessing Officer had found that the assessee HRP did not have any other business but lease of the properties and that no construction project had been carried out by it since its incorporation in the year 1975 nor it had made any sale since the financial year 2000-01. The presumption of the Assessing Officer that no prudent person would wait for more than 10 to 20 years even after payment of twice the cost of the building could not be countenanced. If the building had not been conveyed to the purchaser and had remained with the developer there was nothing wrong in the developer leasing out the premises. The absence of legal proceedings by the intending purchasers could have no impact on the tax levy of the assessee. The fact remained that the Assessing Officer had clearly found that but for the lease of properties the assessee was not engaged in any other business. That irrespective of whether they were held as stock-in-trade or fixed assets, it was admitted by the assessee CMDP and accepted by the Assessing Officer, that the lease of buildings was the only business carried on by it and it had been receiving rental income from these buildings. The Commissioner (Appeals) had rightly held that the income was from business and not income from house property, especially since the assessees had only the business of renting out buildings in the assessment years 2002-03 to 2007-08. The order of the Tribunal reversing his order and affirming the order of the Assessing Officer was therefore, set aside. (AY. 2002-03 to 2007-08)
H. R. Properties Pvt. Ltd v. ACIT (2024)466 ITR 339 (Pat)(HC)
Chero Medico and Developers Pvt Ltd v. ACIT (2024)466 ITR 339 (Pat)(HC)

405 **S. 28(i) : Business income-Rental income-Sub-letting of mall could not be assessed as income from house property and same was to be assessed as income from business. [S. 22]**
Assessee-company's main object was business of constructing, owning, acquiring, developing, managing, running, hiring, letting out, selling out or leasing shopping mall. It derived rental income by letting out properties in mall. Rental income received by assessee from sub-letting of mall could not be assessed as income from house property and same was to be assessed as income from business. (AY. 2011-12)
PCIT v. M. P. Entertainment and Developers (P.) Ltd. (2024) 299 Taxman 211 (MP)(HC)

406 **S. 28(i): Business income-income from other sources-Prize money from unsold lottery tickets-Winnings from unsold lottery tickets are assessable as business income. [S. 2(24)(ix), 56(2)(ib)]**
Held that winnings from unsold lottery tickets are assessable as business Income. Followed *Pooja Marketing v. PCIT (2021) 212 TTJ 306 (Mum)(Trib) Distinguished CIT v. Dr. M. A. M. Ramaswamy (2015) 128 DTR 265 (Mad) (HC).* (AY. 2015-16, 2016-17)
Dy. CIT v. Pooja Marketing (2024) 232 TTJ 4 (UO) (Chennai) (Trib)

S. 28(i) : Business income-Income from other sources-Leasing and finance-Interest-Non-Banking finance-Rule of consistency-Assessable as business income. [S. 56] 407

Held that the business of assessee is leasing and finance. Rule of consistency is followed. Assessable as business income and not assessable as income from other sources. (AY. 2013-14)

Malbros Holdings P. Ltd. v. ITO (2024) 114 ITR 25 (SN)(Delhi)(Trib)

S. 28(i) : Business income-Prize winnings from unsold lottery tickets-Income from other sources-Reseller of Government paper lottery tickets-Prize winnings from unsold lottery tickets would part of business income-Eligible to set off its losses. [S. 2(24)(ix), 56(2)(ib), 70, 71, 74A, 115BB, 194B] 408

Assessee is a partnership firm and acted as reseller of government paper lottery tickets. It credited certain sum under head prize money from unsold lottery tickets in profit and loss account and reflected net profit which was offered as business income. Assessing Officer held that winnings from lottery would be chargeable to tax as income from other sources and assessee is not entitled to claim any expenditure against same. CIT(A) allowed the claim. On appeal the Tribunal held that view of decision of Tribunal in assessee's own case in earlier year, prize winnings from unsold lottery tickets would be part of business income and assessee would be eligible to set-off its losses against this income. Followed, Pooja Marketing v. PCIT (ITA. No. 2596 (Mum) of 2019 dt. 24-5-2-2021. (AY. 2015-16, 2016-17)

DCIT v. Pooja Marketing (2024) 209 ITD 450 (Chennai) (Trib.)

S. 28(i): Business income-Survey-Surrendered excess stock, cash and receivables-Offered as business income-Surrendered income cannot be assessed under deeming provisions of section. 69A, 69B, 115BBE. [S. 69A, 69B 115BBE, 133A] 409

During course of survey under section 133A, assessee surrendered excess stock, cash and receivables, stating that same was to be taxed as business income. Assessing Officer treated said surrendered amount as unexplained investment under sections 69A and 69B and charged same to tax as per provisions of section 115BBE. CIT(A) affirmed the addition. On appeal the Tribunal held that since during survey proceedings, assesse was confronted not only with discrepancies found but also with nature and source thereof and it had emerged that source of income of assessee was from its business operations, income surrendered by assessee during survey could not be brought to tax under deeming provisions of section 69A and 69B and same had been rightly offered to tax by assessee under head of business income. Accordingly deeming provisions cannot be applied to tax under section 115BBE of the Act. (AY. 2015-16, 2016-17 & 2019-20)

Veer Enterprises v. DCIT (2024) 206 ITD 289/114 ITR 566 (Chd) (Trib.)

S. 28(i) : Business income-Survey-Unaccounted receipts-Disclosed in the revised return-Assessable as business income and not as cash credits applying the provision of S. 115BBE of the Act. [S. 68, 115BBE, 139(5)] 410

Assessee-company ran a hospital. In the course of survey loose sheets were found. The asessee filed the revised return and offered the alleged profits as business receipts.

Assessing Officer held that unaccounted receipts were an unaccounted income of assessee and added same to assessee's income by invoking provisions of section 68 and taxed same under section 115BBE. CIT(A) deleted the addition. On appeal the Tribunal held that since assessee had already disclosed unaccounted receipts offered during course of survey in revised return filed, there was no reason to add same again in assessee's income invoking provisions of section 68 and brought them to tax under section 115BBE. As unaccounted receipts were relating to business operations of assessee's hospital, they were taxable as business income under section 28; section 68 read with section 115BBE is not applicable. (AY. 2013-14)
ACIT v. Surat Life Care (P.) Ltd. (2024) 205 ITD 538 (Surat) (Trib.)

411 **S. 28(i) : Business income-Capital gains-Purchase of land-Co-owners-Partnership firm with-Co-owners-Development agreement with firm-Intention was doing real estate business-Profit is to be assessed as business income and not as capital gains-Denial of exemption under section 54F is justified. [S. 45, 54F]**
Assessee along with seven co-owners had purchased a land in 2006. Assessee along with very same seven co-owners established a partnership firm. Thereafter, co-owners entered into a development agreement with their own partnership firm to develop said land and construct 18 bungalows. Assessee had shown long-term capital gain (LTCG) on sale of said land. Assessing Officer held that land was purchased for business purpose for developing a commercial project, therefore, he treated said profits arose on transfer of land as business income and also denied claim of exemption under section 54F made by assessee. CIT(A) up held the addition. On appeal the Tribunal held that the assessee along with seven co-owners had purchased another parcel of land in 2014 and constituted another partnership firm with same set of co-owners and engaged in business of land development. This clearly established motive, intention and interest of assessee in doing real estate business. It was further noted that moment when assessee had entered into development agreement, value of land increased. Assessee was liable to file wealth tax return but assessee never filed wealth tax return. The said piece of land was treated by assessee as stock-in-trade and no question of capital gain arose in said set of facts. On facts, impugned order treating LTCG shown by assessee as business income and denying claim of deduction under section 54F to assessee is upheld. (AY. 2015-16)
Bhanuprasad Maganlal Patel v. DCIT (2024) 205 ITD 429/228 TTJ 393 (Ahd) (Trib.)

412 **S. 28(i) : Business income-Unregistered agreement-Deemed owner-Capital gains-Sale of land-Assessing Officer is justified in making addition on account of entire sale consideration received from ultimate buyer in hands of assessee. [S. 2(47), 4]**
Assessee is a partnership firm engaged in business of civil construction, sold a land to Shri Govind Reality Pvt Ltd for a sum of Rs. 1.20 crores through an unregistered agreement and received an advance of Rs. 10 lakhs. Shri Govind Reality Pvt Ltd further sold said land for consideration of Rs. 4.70 crores to Swami Vivekanand Institute of Neurology Neurosurgery & Spine and M/s Swami Mediservices Pvt Ltd. Sale consideration amount of Rs. 4.70 crores was received by assessee from Swami Vivekanand Institute of Neurology Neurosurgery & Spine and M/s Swami Mediservices Pvt Ltd. Assessee retained balance due of Rs. 1.10 crores from Shri Govind Reality Pvt Ltd and passed excess amount to Shri Govind Reality Pvt Ltd. Assessee offered to tax

sale consideration of Rs 1.20 crores received from Shri Govind Reality Pvt Ltd as its business turnover. Assessing Officer held that Shri Govind Reality Pvt Ltd was not at all owner of assessee's land and assessee was trying to swindle amount of Rs. 3.50 crores as income of Shri Govind Reality Pvt Ltd and eventually trying to evade tax by presenting an unrealistic picture of financial accounting. Therefore, he made additions on account of entire sale consideration of Rs. 4.70 crores as business income of assessee. On appeal the CIT(A) deleted the addition of Rs. 3.50 crores made by the Assessing Officer. CIT(A) enhanced the income under section 251 for failure to charge the interest as per the terms of the agreement. Accordingly addition of an amount of Rs. 6.40 lakhs was made on account of notional interest. On cross appeal the Tribunal held that in view of law laid down in case of *CIT v. Balbir Singh Maini (2017)86 taxmann.com 94 (SC)* an unregistered agreement 'has no efficacy in eyes of law, therefore, Shri Govind Reality Pvt Ltd. could not be treated as owner of land on basis of impugned unregistered agreement, and accordingly, there was no transfer or sale of immovable property by Shri Govind Reality Pvt Ltd. to Swami Vivekanand Institute of Neurology Neurosurgery & Spine and M/s Swami Mediservices Pvt Ltd. Accordingly, addition made to income of assessee was justified. Tribunal deleted the enhancement made by the CIT(A). (AY. 2015-16)
ITO v. Rishi Construction (2024) 204 ITD 159 (Indore) (Trib.)

S. 28(i) : Business income-Capital gains-Own capital-Share dealings-Assessable as business income. [S. 45] 413
Assessee-company traded in shares and had showed short term capital gain from some transactions. Assessing Officer held that purchase of shares is about 65 per cent of total income. Out of total assets, assessee also made investment in shares which was 76 per cent of total assets, therefore, Assessing Officer held that assessee is dealing in shares and treated income under head business income. CIT(A) affirmed the order of the AO. On appeal the Tribunal held that one of objects of the assessee is to carry on the business as shares and stock brokers and to buy, sell and deal in all kind of shares, stocks, securities, bonds, debentures, units and such other instruments of all types. The claim of assessee that it is investing its own funds which were lying idle was not in itself sufficient to establish that trading in shares is done as investments to earn capital gain. Order of the AO is affirmed in taxing said income as business income. (AY. 2010-11)
Madura Biotech (P.) Ltd. v. DCIT (2024) 208 ITD 699 (Delhi) (Trib.)

S. 28(i) : Business loss-Penny stock-Share trading-Information from investigation wing-VAS Infrastructure Ltd (VASIL)-Not black listed by SEBI-Order of Tribunal allowing the loss is affirmed by High Court-Delay of 224 days-SLP of Revenue is dismissed on account of delay. [S. 10(38), 45, Art. 136] 414
On the basis of the information received from the Investigation Wing that the assessee made transaction with penny stock scrip VAS Infrastructure Ltd (VASIL) to launder money to grab long-term capital gain and claimed exemption under section 10(38). Scrip of the VAS were manipulated by the assessee to generate bogus losses. Additions were made to income of assessee on account of bogus loss incurred in penny stock. The Tribunal deleted the additions. On appeal to the High Court, the Revenue submitted the order of the Tribunal was ex-facie erroneous, illegal and perverse because Tribunal

deleted the additions on account of disallowance of bogus loss in penny stock incurred, without appreciating that the transaction was pre-arranged as well as sham and was carried out through penny scrip company/paper Company. High Court held that the Tribunal held that the assessee was continuously dealing in share trading of various shares/scrips and said fact was not disputed. Further the Tribunal had observed that scrip of VAS was not black listed by SEBI at relevant point of time. Tribunal had also considered order passed by SEBI and nowhere in said order, scrip of VAS was blacklisted or was penny stock or sham and bogus scrips/shares. Tribunal had also observed that entire transaction of purchase and sale of scrips was through Stock Exchanges, through authorized brokers and payments made to brokers were reflected in bank account. Tribunal had therefore opined that merely on conjecture and surmises, Assessing Officer could not make disallowance. Court affirmed the order of the Tribunal. SLP of Revenue is dismissed on account of delay of 224 days in filing of SLP. (AY. 2012-13)

PCIT v. Genuine Finance P. Ltd(2024) 464 ITR 588 /162 taxmann.com 700 (SC)

Editorial : PCIT v. Genuine Finance P. Ltd. (2023) 294 Taxman 303 /(2024) 462 ITR 492 (Guj.)(HC)

415 **S. 28(i): Business loss-Penny stocks-Bogus purchases-Genuineness of transactions are proved-No control over on share prices-Losses are deleted and moreover assessee had no control whatsoever on share prices-No substantial question of law. [S. 260A]**

(Assessee is engaged in trading penny stocks, specifically shares of Alang Industrial Gases Ltd (AIGL) and Kappac Pharma Ltd (KPL). AO disallowed the loss. On appeal the CIT(A) and Tribunal allowed the loss on the ground that the assessee had no control over share prices and had genuinely incurred losses, particularly with AIGL shares where only a portion were sold, and rest were held into subsequent assessment year. Regarding shares of KPL, Tribunal reasoned that market rate being lower, justified business loss, even though shares were not sold. High Court affirmed the order of the Tribunal. (AY. 2015-16)

PCIT(Central) v. Affluence Commodities (P.) Ltd. (2024) 471 ITR 252 /161 taxmann.com 476 (Guj) (HC)

416 **S. 28(i): Business loss-Derivative contracts-Foreign Exchange fluctuations-Allowable as business loss. [S. 37(1)]**

Held that the appellate authorities rendered concurrent findings in favour of the assessees, to the effect that the derivative contracts, foreign exchange transactions against fluctuations in interest rates were hedging transactions and the loss arising out of them was allowable as business loss. This was justified.. (AY. 2003-04 to 2014-15)

Shriram Transport Finance Co. Ltd. v. ITO (OSD) (2024)460 ITR 66 (Mad)(HC)

417 **S. 28(i) : Business loss-Market to market loss-Allowable as business expenditure. [S. 37(1)**

Held that market to market loss is allowable as business expenditure. (AY. 2010-11,2011-12)

ITC Ltd v. ACIT (2024) 230 TTJ 921 / 38 NYPTTJ 626 (Kol)(Trib)

S. 28(i):Business loss-Loan to employees-Sundry advances written off is allowable as business loss. [S. 37(1)] 418

Held that the assessee had advanced loan to its employee on account of business interest, and due to shutdown of the operations of the entity the loan became irrecoverable and was written off along with the imprest lying with the employee who was looking after the day-to-day business, the same is allowable as business loss. Advances to various parties for entering into a new business which did not materialize, said advances having become irrecoverable are allowable as business loss. (AY. 2010-11)

ACIT v. Daawat Foods Ltd. (2024) 231 TTJ 30 (UO) (Delhi)(Trib)

S. 28(1): Business loss-Transfer of inter-corporate deposits and liabilities to a sister concern for a lesser consideration-Loss is not allowable as deduction. [S. 37(1)] 419

Held that though lending is mentioned under the head objects incidental or ancillary to the attainment of the main object, it only supports the main object. It is not the business of the assessee to make investment in inter-corporate deposits. The loss incurred by the assessee is on capital account and not on revenue account and not a business loss. Order of the AO is affirmed. (AY. 2017-18)

Nayara Energy Ltd. v. ACIT (2024) 232 TTJ 353 / 244 DTR 89/ 38 NYPTTJ 1162 (Mum) (Trib)

S. 28(1): Business loss-Speculation loss-High seas sales not speculation loss-Allowable as business loss. [S43(5)] 420

Held that loss arising from the sale of goods and high seas sales could not be said to be a speculation loss. The order of the Commissioner (Appeals) holding it to be a regular trading loss was upheld. (AY. 2001-02 to 2008-09)

ITO v. M. M. Poonjiaji Spices Ltd. (2024)113 ITR 294 /230 TTJ 312/166 taxmann.com 412 (Mum)(Trib)

S. 28(i) : Business loss-Shortage and excess of stocks on physical verification of inventory-Ordinary loss in case of a manufacturer-Allowable as deduction. [S. 37(1)] 421

Held that loss is normal occurrence in the case of an engineering producing company having multi-State operations. The Commissioner (Appeals) looking to the totality of the facts had deleted the addition. There was no infirmity in the order. Even otherwise in the absence of any adverse material if on physical verification shortage of stock was found, it was an ordinary loss in case of a manufacturer, and could not have been disallowed by the Assessing Officer. (AY. 2014-15

ACIT v. NRB Bearings Ltd. (2024)112 ITR 17 (SN)(Mum) (Trib)

S. 28(i) : Business loss-Bad debt-Non-recovery of part of an amount advanced towards purchase of property-Written off in profit and loss account and claimed as deduction while computing income-business loss. [S. 36(1)(vii), 37(1)] 422

Part of the amount advanced by the Assessee towards purchase of immovable property, being stock-in-trade, had subsequently become irrecoverable. The same was written-off by the Assessee from its profit & loss account and therefore, claimed as deduction while computing income. Held, although the AO was correct in holding the said amount

cannot be allowed as a bad debt since it was not offered as income on any earlier occasion by the Assessee, however, the facts that the same is in nature of loss incidental to carrying of its business was allowable as deduction for arriving at its true income. *CIT v. Mysore Sugar Co. Ltd. [(1962) 46 ITR 649 (SC)*] followed. (AY. 2015-16)
Biltech Engineers P. Ltd. v. Asst. CIT [2024] 109 ITR 9(SN) (Raipur)(Trib)

423 **S. 28(i) : Business loss-Embezzlement of stock by an employee-FIR is filed-Loss is allowable as business loss. [S. 37(1), 145]**
Assessee carrying on business of gold and diamond jewellery claimed loss in respect of embezzlement of stock by an employee and others. Lower authorities disallowed claim of embezzlement. Tribunal held that since FIR had been filed by assessee quantifying details of embezzlement of theft and police had confirmed said FIR and assessee had also filed all relevant documents to prove that there was an actual embezzlement, loss claimed by assessee deserved to be allowed (AY. 2012-13)
Heena Gems v. ACIT (2024) 208 ITD 481 /114 ITR 30 (SN) (Mum) (Trib.)

424 **S. 28(ii)(c) : Business income-Termination of agency –Neither capital structure of assessee had been affected nor it had affected trading structure of business-Compensation received by the assessee from German company was business income under section 28(ii)(c) read with section 28(va)(a) and not capital gains. [S. 28(va), 45, 55]**
Assessee-company had entered into an Agreement for Distribution, Manufacturing and Agency of products (ADMA 1997) with one BM Germany in 1997. In 2004 RDG had acquired BM group all over world and in same year RDG unilaterally terminated certain obligations under 1997 agreement, which was challenged by assessee in UK court and thereafter assessee and RDG entered into out of court settlement as per which assessee and RDG mutually agreed to terminate (ADMA 1997) and RDG paid compensation to assessee. Assessing Officer proceeded to hold that proceeds received by assessee-company from RDG on account of termination of agency and distribution of products in India fell under provisions of section 28(ii)(c) read with section 28(va)(a) and made addition thereof to business income of assessee. CIT(A) confirmed the addition. On appeal the Assessee submitted that since it had transferred entire business and its rights under agreement had been terminated, amount received in consideration thereof was assessable as capital gain. Tribunal held that the assessee-company by virtue of agreement got non-transferable, non-assignable license to manufacture, market, distribute and sell products for a satisfied commission as agent and entire intellectual property qua distribution and manufacturing of product would remain with BM and assessee would not be entitled for any such ownership or title to same and there was no loss of business. Further, neither capital structure of assessee had been affected nor it had affected trading structure of business of assessee rather after settlement agreement assessee's sales had enhanced. Therefore, compensation received by assessee from RDG in out of court settlement was a business income and not an income assessed to capital gains as claimed by the assessee and as such provisions contained under section 28(ii)(c) read with section 28(va)(a) were attracted. Order of Assessing Officer is affirmed. (AY. 2005-06)
Piramal Enterprises Ltd. v. DCIT (2024) 205 ITD 636/116 ITR 261 (Mum) (Trib.)

S. 28(iiib) : Business income-Cash assistance-Capital or revenue-Subsidy or grant or cash incentives or duty drawback or waiver or concession or reimbursement Incentive received from Government for exploring new export market-MEIS Scheme under Foreign Trade Policy, 2015-Though the said amounts are brought into P&L a/c and claimed as exempt in the return of income, the said treatment in the books of accounts by itself cannot be determinative of its taxability-Benefit under Foreign Trade Policy, 2015 being MEIS scrips does not fall within the meaning of cash assistance under s. 28(iiib)-Capital receipt, not chargeable to tax. [S. 2(24)(xviii), 4] 425

Held that sub-cl. (iiia) of s. 28 which explains profits on sale of a license granted under the Import (Control) Order, is not applicable in the facts and circumstances of the case. Further, sub-cl. (iiib) of s. 28 provides cash assistance (by whatever name called) received or receivable by any person against exports under any scheme of the Government of India. There was no cash assistance granted to the assessee in the present case, thus, it is not applicable. Further, sub-cl. (iiic), which explains any duty of customs or excise repaid or repayable as drawback to any person against exports under the Customs and Central Excise Duties Drawback Rules, is not applicable. Further, sub-cls. (iiid) and (iiie) which explain any profit on the transfer of the Duty Entitlement Pass Book scheme and any profit on the transfer of the Duty Free Replenishment Certificate, respectively, admittedly, do not cover the facts and circumstances of the case, and so, is not applicable. Capital receipt not chargeable to tax. (AY. 2017-18, 2018-19, 2020-21)
ACIT v. Eastman Exports Global Clothing (P) Ltd. (2024) 232 TTJ 121 / 38 NYPTTJ 1190 (Chennai)(Trib)

S. 28(iv) : Business income-Value of any benefit or perquisites-Converted in to money or not-Assets received free of cost from AEs located outside India-MAP-Price is already agreed under MAP-Therefore, the AO was not justified in making addition under S. 28(iv). 426

Held that the equipments received by the assessee from its AEs free of cost for testing purposes are either returned or destroyed and the pricing towards the software development services rendered by the assessee to the said AEs are agreed under MAP, no benefit or perquisite is chargeable under s. 28(iv). (AY. 2015-16)
Samsung R&D Institute India-Bangalore (P) Ltd. v. JCIT (2024) 232 TTJ 522 / 38 NYPTTJ 1392 (Bang)(Trib)

S. 28(iv) : Business income-Value of any benefit or perquisites-Converted in to money or not-Capital Gains-Loss-Conversion of loan given to subsidiary to optionally convertible preference shares at face value-Merchant Banker's valuation report-Not tax avoidance-Cost of acquisition tenable. [S. 41(1)] 427

Held that the facts on record did not suggest that the sale price of the optionally convertible preference shares was artificially deflated as supported by an independent report of a merchant banker and later on, the same investment was sold at a lower price to a third party. There was no infirmity in the sale consideration of the optionally convertible preference shares. The Assessing Officer had mixed up both the transactions in arriving at the conclusion that the investment made by WEP in the optionally convertible preference shares issued by WEC was also sham even though it was an

independent transaction. The Assessing Officer was not justified in disallowing the claims of both long-term and short-term capital loss. The order of the Commissioner (Appeals) deleting the disallowance is affirmed. (AY. 2017-18)
Dy. CIT v. Welspun Steel Ltd. (2024)114 ITR 107 (Mum)(Trib)

428 **S. 28(va) : Business income-Cash or kind-Under an agreement-Non-compete fee-Joint venture company-Negative covenant-Loss of source of income-Capital receipt-Finance Act, 2002, with effect from 1-4-2003 applicable only after the assessment year 2003-04. [S. 4]**
Assessee-company is engaged in manufacture of pharmaceutical products. It entered into an agreement with its joint venture company on 12-3-2002 to effect that it will not engage in marketing, distribution and sale of its products for a certain period. Assessee received non compete fee from its joint venture company and claimed same as capital receipt. Assessing Officer treated non compete fee as being revenue receipt. CIT(A) deleted the addition. On appeal the Tribunal held that since agreement entered into by assessee with joint venture company was a negative covenant restricting assessee from carrying out its certain activities, which nevertheless was a loss of source of business to assessee, non compete fee received by assessee is in nature of capital receipt for year under consideration and it is not liable to tax. Amendment introduced by, Finance Act, 2002, with effect from 1-4-2003 is applicable only after the assessment year 2003-04. (AY. 2002-03)
ACIT v. Lyka Labs Ltd. (2024) 208 ITD 532 (Mum) (Trib.)

429 **S. 31 : Repairs-Current repairs-Capital or revenue-Treated capital in nature in books-Allowable as deduction-Matter is remanded to the Assessing Officer. [S. 37(1), 145]**
Held that what is required to be seen was the nature of repair and maintenance, which neither the Assessing Officer nor the Commissioner (Appeals) did. A perusal of the details showed that the repairs and replacement of parts of plant and machinery were small and to be allowed under section 31 irrespective of the nature of the expenditure. The Assessing Officer is directed to examine the details in line with the Supreme Court decision in *CIT v. Saravana Spinning Mills P. Ltd. (2007) 293 ITR 201/ (2007) 7SCC 298/ (2007) SCC Online SC 1000.* (AY. 2003-04)
Hindalco Industries Ltd. v. Dy. CIT (2024)114 ITR 502 (Mum)(Trib)

430 **S. 31 : Repairs-Capital or revenue-Expenditure for spare parts-Allowable as revenue expenditure.**
Held that the replaced machinery and equipment were part of the plant and not separate entities capable of independent functioning. The assessee, an ISO 14001 certified company, had to maintain its plant in good condition to comply with environmental standards, which necessitated these repairs. The replacements did not result in an increase in production capacity. Allowable as revenue expenditure. Order of CIT(A) is affirmed. (AY. 2015-16)
ACIT v. Gujarat Insecticides Ltd. (2024)114 ITR 12 (SN)(Ahd)(Trib)

S. 31: Repairs-Current repairs-Manufacture Of Fertilisers and chemicals-Expenditure on pipelines and fuel burner-Parts of plant and machinery-Parts incapable of independent use-Replacement of parts of machine is current repairs-Expenses allowable as revenue expenditure. [S. 37(1)] 431

Held that the expenditure on repairs and maintenance was on replacement of parts of machinery and plant, which could not be treated at par with repairs and maintenance of the entire plant and machinery. The pipelines and dual fuel burner system formed a part of the entire plant and machinery, and these parts did not function independently. Allowable as expenses were of revenue nature. (AY. 2011-12)

Gujarat State Fertilizers and Chemicals Ltd. v. Dy. CIT (2024) 110 ITR 641 (Ahd)(Trib)

S. 32 : Depreciation-Carry forward and set off of unabsorbed depreciation-Amendment of Section 32(2) by Finance Act, 2001-Unabsorbed depreciation or part thereof not set off till Assessment year 2002-03-Carry forward and set off permitted without limit-High Court affirmed the order of the Tribunal-SLP of Revenue is dismissed [S. 32(2) Art. 136] 432

Held, dismissing the appeal, that the Tribunal was justified in confirming the order of the Commissioner (Appeals) allowing carry forward and set off of unabsorbed depreciation of the assessment years 1996-97 to 1998-99 and the amount on account of increase in written down value for the assessment years 2004-05 and 2005-06, in the assessment year 2007-08, without any limitation of period. Circular No. 14 of 2001 dated November 9, 2001 ([2001] 252 ITR (St.) 65), Finance Act, 2001 [2001] 249 ITR (St.) 37. *General Motors India (P.) Ltd. v. Dy. CIT (2013) 354 ITR 244 (Guj)(HC)* SLP of Revenue is dismissed. (AY. 2007-08)

PCIT v. Vishaldeep Spinning Mills Ltd. (2024)465 ITR 530/299 Taxman 368 (SC)

Editorial : PCIT v. Vishaldeep Spinning Mills Ltd [2023] 153 taxmann.com 372/ (2024) 465 ITR 524 (Guj)(HC)

S. 32 : Depreciation-Revaluation-Actual cost-Taken over assets and liabilities of the firm-Actual cost of assets will be actual cost which assessee paid to predecessor after revaluing assets-Entitled to claim depreciation for subsequent years on basis of actual cost paid-SLP of Revenue is dismissed. [S. 43(1), Proviso, R. 5, Art. 136] 433

Dismissing the appeal of the Revenue the High Court held that when the assets and liabilities are taken over from the partnership firm the assessee will be entitled to claim depreciation in respect of any assets on actual cost of said assets. The actual cost of said assets will be actual cost which assessee paid to predecessor after revaluing assets and the assessee will be entitle to depreciation for subsequent years on basis of actual cost paid. SLP of Revenue is dismissed. (AY. 2009-10)

PCIT v. Dharmanandan Diamonds Pvt. Ltd. (2024)467 ITR 31/ 64 300 Taxman 95 (SC)

Editorial : PCIT v. Dharmanandan Diamonds (P.) Ltd. (2023) 294 Taxman 29/(2024)467 ITR 26 (Bom.)(HC)

S. 32 : Depreciation-Amalgamation-Intangible assets-Goodwill is valuable asset-Entitlement to depreciation-SLP of Revenue is dismissed. [S. 32(1), Art. 136] 434

Assessee had taken over a company and claimed depreciation on acquired intangible assets. AO observed that in agreement no particulars were furnished related to intangible

assets which were acquired. AO held that assessee was not entitled to depreciation on intangible assets u/s 32(1)(ii). Tribunal allowed the claim. High Court held that from perusal of order passed by AO it was clear that he had himself found that goodwill had been calculated and allotted as acquired intangible assets thus, assessee would be entitled to claim depreciation u/s 32(1)(ii) in respect of intangible assets. SLP filed by revenue is dismissed. (AY. 2001-02)
CIT v. Hewlett Packard India Sales (P.) Ltd. (2024) 298 Taxman 448 / 463 ITR 334 (SC)
Editorial : CIT v. Hewlett Packard India Sales (P.) Ltd. (2021) 279 Taxman 355(2024)463 ITR 329 (Karn)(HC) upheld

435 **S. 32 : Depreciation- Carry forward and set off - Unabsorbed depreciation pertaining to AY 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 S. 32(2) as amended by Finance Act, 2001 - SLP of Revenue is dismissed. [S. 32(2), Art. 136]**
High Court held that unabsorbed depreciation pertaining to AY 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 S. 32(2) as amended by Finance Act, 2001. SLP filed by the Revenue is dismissed. (AY. 2007-08)
PCIT v. Vishaldeep Spinning Mills Ltd. (2024) 299 Taxman 368 / 465 ITR 530 (SC)
Editorial : PCIT v. Vishaldeep Spinning Mills Ltd (2023) 153 taxmann.com 372 / (2024) 465 ITR 524 (Guj)(HC)

436 **S. 32 : Depreciation - Block of assets - Ready for use - Entitlement to full depreciation. [S. 2(11), R. 5(1)]**
Held that the block of assets on which depreciation u/s 32 had been claimed by the assessee were old and none of them were acquired during the previous year relevant to the AY in question. Therefore, the second and third proviso to sub-section (1) of S. 32 would not apply. The assets in question on which the depreciation had been claimed were being used for the purpose of business or profession from earlier years. The block of assets on which the depreciation for the whole year had been claimed were ready for use during the entire year. The assessee is entitled to full depreciation for the AY s 1999-2000 and 2000-01. (AY. 1999-2000, 2000-01)
Khar Hospitality India Ltd. v. CIT (2024)471 ITR 200 (Cal) (HC)

437 **S. 32 : Depreciation - Unabsorbed depreciation - Carried forward - Deemed to be a business loss - Can be set off only against profits or gains of any business or profession - Cannot be set off against income from other source. [S. 28(i), 32(2), 56, 71, 72(2), 72(3), 143(1), 154, Art. 226]**
The assessee filed an application for rectification u/s 154, claiming that full set off of the unabsorbed depreciation had to be granted and the denial of that benefit to the assessee was illegal. The petition filed by the assessee was rejected with a finding that there was no ground for rectification. On writ, the assessee contended that a reading of S. 72 would indicate that where such loss in the form of depreciation was carried forward to the next year, the same could be set- off against income arising from heads other than 'profits or gains of business or profession. Dismissing the writ petition, the court held that the right u/s 32(2) is specifically made subject to the provisions of sections

72(2) and 72(3). It is clear from the reading of the provisions of S. 72 that even if the depreciation allowance u/s 32, which was carried forward in terms of sub-section (2) of S. 32, is deemed to be a business loss for the purposes of sections 71 and 72, it can be set off only against profits or gains of any business or profession and it cannot be set off against income from any other sources. Though the Petitioner took considerable efforts to establish that S. 72 is always subject to the provisions of S. 71 going by the express provisions in sub-section (2) of S. 32 permitting the carry forward of depreciation allowance subject to the provisions of S. 72, there is no merit in the said contention taken by the petitioner. Writ petition is dismissed. (AY. 2023-24)(SJ)
Alapatt Jewellers v. Dy. CIT (2024) 301 Taxman 447 (Ker.)(HC)

S. 32 : Depreciation - Godowns - Plinths - plinth constructed could not be treated as building - Not entitled to depreciation - Order of Tribunal is affirmed. [S. 22, 26, 260A] 438
Assessee purchased property and thereafter constructed godowns and plinths. Assessee claimed depreciation on the cost of plinths which was disallowed by the AO. CIT(Appeals) allowed the appeal by holding that plinths constructed by assessee were building within meaning of S. 26. On appeal, the Tribunal affirmed the order of the AO. On appeal, the Court held that the plinth constructed by assessee could not be treated as building within meaning of S. 26. Order of the Tribunal is affirmed. (AY. 2005-06)
Y. S. & Co-owners v. ITO [2024] 301 Taxman 647 (P& H)(HC)

S. 32 : Depreciation - Hotel - Temporary closure - Block of assets - Put to use less than 180 days - Second proviso - Acquired in earlier years - Second and third proviso is not applicable - Depreciation is allowable. [S. 32(1), 260A] 439
The question before the High Court was whether depreciation allowed in respect of hotel assets used for the purpose of business can be reduced in any manner because of temporary closure of the hotel for part of the year and if the Tribunal is justified in restricting the allowance to 50%. Allowing the appeal, the High Court held that block of assets on which the depreciation has been claimed by the assessee are old and none of it were acquired during the previous year relevant to AY, therefore, the second and third proviso to S. 32 (1) shall apply. Appeal of the assessee is allowed. Followed, *CIT v. Wallfort Shares & Stock Brokers (P)(Ltd (2010) 233 CTR 42/ 41DTR 233 (SC)/ (2010) 8 SCC 137.* (AY. 1999-2000, 2000-01)
KHR Hospitality India Ltd. v. CIT (2024) 338 CTR 761 (Cal) (HC)

S. 32 : Depreciation - Carry forward and set-off of unabsorbed depreciation - Amendment of S. 32(2) by Finance Act, 2001 - Unabsorbed depreciation or part thereof not set off till AY 2002-03 - Carry forward and set-off permitted without limit. [S. 32(2) 260A] 440
Held, dismissing the appeal, that the Tribunal was justified in confirming the order of the CIT (Appeals) allowing carry forward and set-off of unabsorbed depreciation of the AY s 1996-97 to 1998-99 and the amount on account of increase in written-down value for the AY s 2004-05 and 2005-06, in the AY 2007-08, without any limitation of period. Circular No. 14 of 2001 dated November 9, 2001 ([2001] 252 ITR (St.) 65), Finance Act, 2001 [2001] 249 ITR (St.) 37. *General Motors India (P.) Ltd. v. Dy. CIT (2013) 354 ITR 244 (Guj)(HC)* (AY. 2007-08)
PCIT v. Vishaldeep Spinning Mills Ltd [2023] 153 taxmann.com 372 / (2024) 465 ITR 524 (Guj)(HC)

Editorial : SLP of Revenue is dismissed, PCIT v. Vishaldeep Spinning Mills Ltd. (2024)465 ITR 530/299 Taxman 368 (SC)

441 **S. 32 : Depreciation - Temporary erections - wooden structures - 100% Depreciation allowable.**

Court held that the Tribunal was correct in deleting the disallowance of depreciation on temporary wooden structure at 100% in the form of wooden furniture, cabins and wiring which were temporary in nature, on the ground that the issue was covered in favour of the assessee by the order of the Tribunal for the AY 2007-08. The Department had not raised any ground in the appeal with regard to the allowance of depreciation on temporary wooden structures against such decision. Therefore, applying the principle of consistency, for the AYs 2013-14, 2014-15 and 2015-16, the assessee should have been allowed depreciation on the temporary wooden structures. (AY. 2013-14 to 2015-16)

PCIT v. Oriental Bank Of Commerce Ltd. (2024) 464 ITR 563 (Delhi) (HC)

442 **S. 32: Depreciation - Intangible Assets - Goodwill - Amalgamation - The order of the Tribunal allowing the depreciation claim of the assessee was upheld by the High Court. [S. 32(1)(ii)]**

Digital Equipment Corporation, United States of America was taken over by the assessee for an amount of Rs. 83. 99 Crores and the details of net assets taken over and the particulars of liability, loans, etc. were furnished in the agreement. However, no particulars concerning depreciation claims on intangible assets of Rs. 9,07,25,000/-were furnished. The AO held that the assessee was not entitled to depreciation on intangible assets u/s 32(l)(ii) of the Act. However, the CIT (A) allowed the claim of the assessee by following the previous decision of the Delhi Bench of the Tribunal, which has been upheld by the High Court of Delhi in *CIT v. Hindustan Coca-Cola Beverages (P.) Ltd. [2011]198 Taxman 104/331 ITR 192/ 238 CTR 1 (Delhi)(HC)*. The Tribunal upheld the order passed by the CIT (Appeals). On further appeal by Revenue, the High Court by following the judgment of the Supreme Court in the case of SMIFS Securities Ltd. (328 ITR 302) upheld the order passed by the Tribunal and held that the AO himself had found that goodwill was calculated on which depreciation u/s. 32 of the Act was allowable. (AY. 2000-01)

CIT v. Hewlett Packard India Sales (P) Ltd. [2024] 463 ITR 329 / [2021] 124 taxmann. com 431 (Karn) (HC)

Editorial: SLP of the Revenue is dismissed, CIT v. Hewlett Packard India Sales Pvt. Ltd (2024) 463 ITR 334 / 161 taxmann.com 46 (SC)

443 **S. 32 : Depreciation - Claimed in accordance with Appendix I - No substantial question of law. [ITR. 5(1), 5(1) (IA)]**

The assessee claimed depreciation on the written down value which the AO disallowed on the ground that the assessee had not opted therefore in terms of the proviso to rule 5(1A) of the Income-tax Rules, 1962. The CIT (Appeals) upheld this. The Tribunal accepted the assessee's appeal on the question of permission to claim depreciation on written down value basis holding that no particular format or procedure had been laid down in the second proviso in relation to exercise of option by an assessee and that for

the AY 1999-2000, the assessee had claimed depreciation in accordance with sub-rule (1) read with appendix I and this was in proper compliance with the requirements of the second proviso to rule 5(1A) of the Rules. High Court dismissed the appeal of the Revenue as no substantial question of law. (AY. 2000-01)
CIT v. Jindal Steel and Power Ltd. [2009] 180 Taxman 543/ (2024) 460 ITR 159 (P&H) (HC)

S. 32: Depreciation- Actual cost - Grant in aid received from Government - Grant-in-aid basis the scheme is directly attributable to the cost of plant and machinery and technical civil works- Grant-in-aid is therefore, required to be reduced from the value/ cost of the assets eligible for depreciation. [S. 32(1)(ii), 43(1), Expln 10.] 444
Tribunal held that the nature of grant-in-aid is in the form of financial assistance subject to maximum of Rs. 10 crores for setting up of cold chain value addition and preservation infrastructure so that India usher's into a new dawn. However the nature of such grant-in-aid is restricted to technical civil work and plant and machinery. Broadly the financial assistance i. e., grant-in-aid are for technical civil work and plant and machinery and nothing else in the broad scheme of Government of India, MFPI which was called "Scheme for Cold Chain Value Addition and Preservation Infrastructure". Grant-in-aid is therefore required to be reduced from the value/cost of the assets eligible for depreciation. (AY. 2014-15)
Pagro Frozen Foods (P) Ltd. v. ITO (2024) 231 TTJ 413 / 38 NYPTTJ 988 (Chd)(Trib)

S. 32: Depreciation - Written down value - Non-receipt of insurance claim of amalgamating company - Mere claim - Claim actually allowed only to be considered - Depreciation is directed to be allowed on enhanced amount - State capital investment subsidy - Not required to be deducted from the WDV for computing the depreciation. [S. 43(6)(c), 43(1), Explanation 10.] 445
Held that the expression moneys payable should refer to the amount over which the assessee got a right to receive. When the assessee made insurance claim of Rs. 22.44 crores, it was merely a claim only and the assessee did not acquire any right to receive the same. Hence, the assessee was not right in reducing the amount of Rs. 22.44 crores from the WDV in AY 2001-02. The assessee should have reduced the moneys payable for destruction of asset as finally determined as payable by the insurance company. The insurance claim of Rs. 22.44 crores was rejected, but a claim of Rs. 8 crores was granted to the then parent company by the insurance company. Said amount of Rs. 8 crores would be the moneys payable for destruction of asset and the same is required to be reduced from the WDV in AY 2001-02. WDV of AY 2005-06 should be recomputed accordingly from AY 2001-02 onwards. Depreciation for AY 2005-06 should accordingly be allowed on the enhanced WDV. The net result is that the WDV of the block should be increased by Rs. 14.44 crores in AY 2001-02 and the WDV of AY 2005-06 should be arrived at accordingly. Tribunal also held that amount of State Capital investment subsidy received from the State Government under West Bengal Incentive Scheme, 2000 is not required to be deducted from the WDV for the purpose of computing depreciation. (AY. 2005-06)
Hindustan Unilever Ltd. v. Dy. CIT (2024) 232 TTJ 861 / 38 NYPTTJ 1420 (Mum)(Trib)

446 **S. 32 : Depreciation - User for business - Entitled to full depreciation on the aircraft for the whole year. [S. 32 (1) (ii)]**

Held that Aircraft certainly was not allowed to fly to carry passengers or cargo in the absence of this certification by the competent authority, but that did not stop the assessee from holding it in its own name for the purpose of its business. Phrase used for the purpose of business in S. 32 does not mean that the use should be by way of generating revenue only. Use here is in the context of the direct connection of the asset with the purpose of business which is initiated in the relevant year. Expenses which were incurred for making the aircraft functional and ready to use during the year from India, when stand allowed, the same also establish that the certificate of airworthiness issued by the DGCA was only for the statutory compliances and to avoid legal liability, which is part of the business activity. Entitled to full depreciation on the aircraft for the whole year. (AY. 2013-14)

India Flysafe Aviation Ltd. v. DCIT (2024) 159 taxmann.com 1219 /228 TTJ 982 / 236 DTR 185 (Delhi)(Trib)

447 **S. 32 : Depreciation - Trial runs - Aircraft put to use in subsequent year for training purposes - Depreciation and maintenance is allowable. [S. 37(1)]**

Held that the trial run of the aircraft was obviously for the purpose of business and nothing else. As the statute did not prescribe a minimum time-limit for "use" of the machinery, the assessee could not be denied the benefit of depreciation on the ground that the aircraft was used for a very short duration for trial run. Consequently, depreciation and maintenance expenses of the aircraft were held to be allowed as a deduction. (AY. 2003-04)

Hindalco Industries Ltd. v. Dy. CIT (2024)114 ITR 502 (Mum)(Trib)

448 **S. 32 : Depreciation-Plant and machinery-Depreciation is allowable.**

Following the order of earlier year. *Lakshmi Energy And Foods Ltd. v. ACIT 2014 SCC OnLine ITAT 11168*, disallowance of depreciation is deleted. (AY. 2011-12)

Dy. CIT v. Laxmi Energy and Foods Ltd. (2024)114 ITR 88 (SN)(Chd)(Trib)

449 **S. 32 : Depreciation - Business premises on lease - Improvement of leased premises by interior decoration, like false ceiling, painting etc. - Write off total expenses at 20% ascertaining the life of expenditure incurred between 3 to 5 years - Claim of depreciation is justified.**

Assessee is a company engaged in the business of sale of high-end branded readymade garments in reasonably decorated showrooms which were obtained on lease basis for 3-5 years. Assessee improved said leased premises by interior decoration like false-ceiling, racks, electrical light fittings, painting, partitions and change of flooring, etc. and since expected life of said items were from 1 to 5 years, assessee wrote off total expenditure at 20 % ascertaining life of expenditure incurred between 3 to 5 years. AO disallowed depreciation and completed assessment under scrutiny determining income of assessee which was confirmed by CIT (Appeals). On appeal the Tribunal held that since there was no dispute regarding method of write-off and claiming by way of depreciation claim of depreciation is justified. (AY. 2014-15)

Hi-Style India (P.) Ltd. v. DCIT (2024) 209 ITD 175 (Chennai) (Trib.)

S. 32 : Depreciation - Toll roads - Constructing a road on BOT basis on Government land - Not owner of road - Toll bridge and toll roads are not tangible assets of assessee in terms of Explanation-3(a) to S. 32(1)(ii) [S. 32(1)(ii)] 450

Held that toll bridge and toll roads are not tangible assets of assessee in terms of Explanation-3(a) to S. 32(1)(ii), hence not entitled to depreciation. (AY. 2013-14, 2014-15)

Hazaribagh Ranchi Expressway Ltd. v. ACIT (2024) 209 ITD 522 /115 ITR 46 (SN) (Mum) (Trib.)

S. 32 : Depreciation - A Non-Banking Finance Company - Investments - Different method of accounting - Securities as per Reserve Bank of India norms - Disallowance of depreciation is deleted - Automated Teller Machine - Akin To Computer and computer software - Depreciation allowable at 60% [S. 145] 451

Held that the assessee had followed a different method of accounting for the purpose of the Act and claimed that it had investments under one category and followed cost or market price whichever was lower, which was different from valuation of securities for the purpose of books which was as per the Reserve Bank of India guidelines. Disallowance is deleted. Followed, *CIT v. City Union Bank Ltd (2007) 291 ITR 144(Mad) (HC)*. Held that automated teller machine is akin to computer and computer software depreciation allowable at 60%. (AY. 2015-16 to 2017-18)

City Union Bank Ltd. v. Dy. CIT (2024)112 ITR 337 /229 TTJ 139 (Chennai)(Trib)

S. 32 : Depreciation - Windmill - Expenditure incurred on preparation of land for installation of windmill - Matter remanded. 452

Held that the records showed that the expenditure on lease of land for 20 years was for the purpose of preparation of the land and to make it suitable for installation of windmill. Therefore, the matter was remanded to the AO for proper verification and adjudication and, if the expenditure appeared to be towards the cost of plant and machinery, that is, the windmill, the AO was directed to allow depreciation in respect of the lease. (AY. 2011-12)

Gujarat State Fertilizers and Chemicals Ltd. v. Dy. CIT (2024) 110 ITR 641 (Ahd)(Trib)

S. 32: Depreciation - Car registered in name of director - Funds utilized of the company - Depreciation is allowable to the company. 453

Assessee company claimed depreciation on a vehicle purchased in the name of the Director of the assessee company. AO disallowed the depreciation claimed @15%. CIT(A) confirmed the disallowance. Revenue submitted that interest on the car loan and insurance expenses were allowed to the assessee. Therefore, the disallowance of depreciation on the car was deemed unwarranted. It was undisputed that purchase of a car was made by assessee company, of matter following Supreme Court's decision in Mysore Minerals Ltd v. CIT [1999] 239 ITR 775 (SC) which was also reflected in books of account of the assessee company. Therefore, it could be asserted that the car was commercially used for the purpose of business. Consequently, depreciation thereon could not be denied. Moreover, interest on car loan and car insurance was allowed by AO. Thus, on facts and circumstance the depreciation was allowed in accordance with law. [ITA No. 828/Ahd/2023 dt. 23/02/2024)(AY. 2017-18)

Mukesh Trends Lifestyle Limited v. DCIT (Ahd)(Trib)(UR)

454 **S. 32 : Depreciation - Rate of depreciation - Computer software - Depreciation allowable at 60%.**
The AO disallowed the assessee's claim to depreciation on computer software stating that the assessee had only purchased a licence to use the software and therefore was not entitled to claim depreciation at 60%. The CIT (Appeals) allowed the claim. That the CIT (Appeals) was right in allowing depreciation on software licence at 60%. Followed *Dy. CIT v. Datacraft India Ltd (2011) 9 ITR 712 / (2010) 133 TTJ 377 (SB) (Mum)(Trib)* (AY. 2013-14)
Gujarat Infrapipes P. Ltd. v. Dy. CIT (2024) 111 ITR 47 (SN)(Ahd)(Trib)

455 **S. 32 : Depreciation - Machine put to use before March 31 - Depreciation is allowable.**
Held that the invoices of purchase of slurry machine and other related cost, bill of entry regarding import of slurry machine, user manual of slurry machine and log book of slurry machine for the periods March 27, 2014 to March 31, 2014 showed that the observations of the CIT (Appeals) that the personnel from Germany stayed till March 30th could not be ground to derive the conclusion that the machine had been put to use only after that date. The employees may have every reason to stay a day or more after completion of the work in India. Hence, keeping in view the documentary evidence, the machine was to be held to have been put to use even before March 31, 2014 and hence, the depreciation is directed to be allowed (AY. 2014-15)
Yala Construction Co. P. Ltd. v. Add. CIT (2024)110 ITR 1 (SN) (Delhi)(Trib)

456 **S. 32 : Depreciation - Computer software - Depreciation is allowable at a rate of 60%.**
Assessee purchased two software and charged depreciation at 60%. AO reduced the claim of depreciation from 60% to 25% on the ground that 60% depreciation would be applicable only in case of computers with software. CIT(A) up held the order of the AO. On appeal, the Tribunal held that since software was guiding hardware and also an integral part of hardware, assessee was rightly claiming depreciation at the rate of 60%. (AY. 2016-17)
PRL Developers (P.) Ltd. v. ACIT (2024) 207 ITD 753 (Mum) (Trib.)

457 **S. 32 : Depreciation - Purchase of assets treated as bogus - Proportionate disallowance of depreciation each year is proper.**
Held that when the purchase of assets are treated as bogus, proportionate disallowance of depreciation each year is proper. (AY. 2017-18, 2018-19)
Dy. CIT v. Reliance Industries Ltd. (2024)109 ITR 180 (Mum)(Trib)

458 **S. 32 : Depreciation - Written down value - Optional - Depreciation was not claimed when it was optional - Assessee cannot be thrust upon to reduce written down value of assets.**
Held that since the depreciation was not claimed by the assessee in the earlier years when the claim was optional in nature, the depreciation could not be thrust upon the assessee so as to reduce the written down value of ssets, the order of CIT (Appeal) is affirmed. (AY. 2017-18, 2018-19)
Dy. CIT v. Reliance Industries Ltd. (2024)109 ITR 180 (Mum)(Trib)

S. 32 : Depreciation - Rate of depreciation - Plant and machinery - Additional depreciation - Exploration of crude Oil - Production of articles or things - Depreciation allowable at 60%. [S. 32(1)(iia), ITR, 1962, Appx. I, Entry Iii(8)(xii)] 459

Held that since in assessee's own case the Tribunal had allowed depreciation on oil field equipment in the AY 2006-07, the assessee was eligible to claim depreciation on oil field equipment at 60%. That for the AY 2006-07, the Tribunal having held that extraction of mineral oil which would amount to "production of articles or things", the assessee was eligible to claim additional depreciation u/s 32(1)(iia) of the Act. (AY. 2007-08, 2008-09)

Joshi Technologies International Inc. v. Asst. CIT (IT) (2024)109 ITR 70 (Ahd)(Trib)

S. 32 : Depreciation - Goodwill - Claim of depreciation not examined in detail by AO - Matter restored to examine,whether depreciation is allowable under which category was depreciation claimed as goodwill or any other commercial right or Intangible assets u/s 32. [S. 2(11), 32(1(ii)] 460

Held that the eligibility of the assessee's claim of depreciation had not been examined in detail by the AO during the course of assessment proceedings, i. e., whether the assessee was eligible to claim depreciation on "goodwill" as per assessee's books as "intangible assets" u/s 32 of the Act, as per assessee's submissions before the Department. Accordingly, in the interest of justice, this issue was restored to the AO to examine firstly, whether or not depreciation was allowable on the asset and under which category the assessee was claiming depreciation, i. e., as depreciation on goodwill or as depreciation of "any other commercial right" or "intangible asset" u/s 32 of the Act. The AO may also examine the necessary supporting documents in justification for the assessee's claim of depreciation. (AY. 2007-08, 2008-09)

Joshi Technologies International Inc. v. Asst. CIT (IT) (2024)109 ITR 70 (Ahd)(Trib)

S. 32 : Depreciation - Computer software - Block of assets - Software and computer as one block, issue was remitted back to AO to decide as per findings returned by Tribunal. [S. 2(11)] 461

AO had disallowed depreciation claimed by assessee on opening WDV of computer software by following his own order passed in AY 2004-05 and had restricted claim of depreciation to 25% as against 60%. Tribunal held that since finding of AO on this issue for AY 2004-05 had been overturned by Tribunal by directing AO to consider software and computer as one block, the present issue was also remitted back to AO to decide as per findings returned by Tribunal. (AY. 2005-06)

Piramal Enterprises Ltd. v. DCIT (2024) 205 ITD 636 /116 ITR 261 (Mum) (Trib.)

S. 32: Depreciation - Merger - AO should allow depreciation on basis of computation made by assessee and not to reduce WDV on basis of notional amount of depreciation. 462

Assessee claimed depreciation on assets of BMIL which got merged with assessee company, calculated on WDV of assets without adjusting for depreciation which was foregone for AYs 1995-96 & 1996-97 by BMIL. However, AO recomputed allowable depreciation on basis of such adjustment. On appeal the Tribunal held that the AO should allow depreciation on basis of computation made by assessee and not to reduce WDV on the basis of notional amount of depreciation. (AY. 2005-06)

Piramal Enterprises Ltd. v. DCIT (2024) 205 ITD 636/ 116 ITR 261 (Mum) (Trib.)

463 **S. 32 : Depreciation - Carry forward of depreciation - New plant and machinery - Used for less than 180 days - Entire additional depreciation cannot be allowed - Balance unclaimed amount can be claimed in subsequent Assessment year.**
Assessee claimed additional depreciation on new plant and machinery acquired in preceding AY, which was eligible for additional depreciation at rate of 20% . However, since new assets were put to use for less than 180 days, claim of additional depreciation allowable at 20% was restricted to 10% . Tribunal held that assessee is to be allowed additional depreciation of 10% for asset purchased in preceding year. I f the new plant and machinery is used for a period of less than 180 days, the entire amount of additional depreciation cannot be claimed in subject AY, balance unclaimed amount can be claimed in subsequent AY. (AY. 2014-15)
Asian Paints Ltd. v. ACIT (2024) 205 ITD 680 (Mum) (Trib)

464 **S. 32 : Depreciation - Additional depreciation - Business is commenced in earlier year - Depreciation and additional depreciation cannot be disallowed. [S. 32(1)(ii)]**
Assessee had claimed depreciation allowance. AO disallowed the same on ground that business of assessee had not commenced. CIT (Appeals) deleted disallowance made by AO. Tribunal held that since AO while framing assessment order u/s 143(3) for AY 2011-12 had accepted that business of assessee had already been started in the previous year, CIT (Appeals) had rightly deleted impugned addition. (AY. 2013-14)
DCIT v. Adani Mining (P.) Ltd. (2024) 204 ITD 269 (Ahd) (Trib.)

465 **S. 32 : Depreciation - Goodwill - an intangible asset, qualifies for depreciation under the section, in acknowledgment of its value and impact on a company's financial performance.**
The assessee, a private limited company engaged in providing financial information and analytics services, claimed depreciation on goodwill arising out of amalgamation with another company in the previous year relevant to the AY under consideration. The AO disallowed the claim on the ground that goodwill is not a depreciable asset under the Act. The assessee challenged the disallowance before the DRP, which upheld the AO's order and also rejected the assessee's alternative claim for additional depreciation on goodwill. The assessee appealed to the Tribunal against the final assessment order. The Tribunal allowed the assessee's appeal and held that goodwill is an intangible asset eligible for depreciation u/s 32 of the Act, following the decision of the Supreme Court in the case of Smifs Securities Ltd. The Tribunal affirmed the principle that goodwill of a business or profession is a depreciable asset under the Act, irrespective of the mode of its acquisition, and rejected the Revenue's attempt to distinguish the Supreme Court's ruling in Smifs Securities Ltd. based on the facts of the case. (AY. 2018-19)
S & P Capital IQ (India) P. Ltd. v. Asst. CIT [2024] 109 ITR 56 (SN)/ 205 ITD 217 (Hyd) Trib)

466 **S. 32AB : Investment deposit account – Eligible business - Profits and gains of business - in books of accounts rental income was shown as business income - Entitlement to deduction - Order of Tribunal is set aside. [S. 22,28(1), 32AB(1)(ii), 32AB(3), 260A]**
The question before the High Court was whether the rental income earned by the appellant and assessed as income from house property will qualify for deduction u/s 32AB of the Act. Allowing the appeal the Court held that it was not the case of the

Revenue or the finding of the Tribunal that the assessee had in its accounts not shown rental income as part of the business income. In fact as per the assessment order, these charges had been considered as part of business income but the AO had excluded them for the purpose of profits to arrive at the eligible business income for the purpose of S. 32AB of the Act. Therefore, so long as the rental income was part of the business income, it would be included in the term "eligible business" because rental income was not excluded in the definition of eligible business. The rental income earned by the assessee and assessed under the head Income from house property would qualify for deduction u/s 32AB of the Act. Accordingly the Court held that the rental income assessed under head income from house property will qualify for deduction u/s 32AB of the Act. (AY. 1987-88)

Indian Express Newspapers (Bombay) Ltd. v. CIT (2024)468 ITR 778 (Bom)(HC)

S. 32AC: Investment in new plant or machinery - Installation of machinery - Blending of lube oil tantamounts to manufacture or production - Entitlement to deduction. 467

Assessee is engaged in the business of manufacture and production of lube oil. During relevant AY it commissioned a lubricants blending plant and claimed investment allowance u/s 32AC of the Act. AO disallowed the claim by holding that the blending process undertaken by assessee-company did not amount to manufacture or production of an article or thing and that threshold limit of investment of INR 100 crores as prescribed u/s 32AC was not met. CIT(A) allowed the claim. On appeal, the Tribunal held that blending of lube oil tantamounts to manufacture or production as contemplated u/s 32AC. Since revenue could not controvert claim of assessee that it had made investment exceeding threshold limit and fact that installation of plant & machinery had been completed during year under consideration was not in dispute at all, assessee was entitled to investment allowance as claimed. (AY. 2014-15)

ACIT v. Idemitsu Lube (P.) Ltd. (2024) 207 ITD 173 /111 ITR 59 (SN) (Delhi) (Trib.)

S. 32AD: Investment in new plant or machinery in notified backward areas in certain States - Effective date of commencement of provisions of S. 32AD and Notification No. 61/2016/F. No. 142/13/2015, dt. 20th July, 2016 - reference to Memorandum Explaining the Provisions in the Finance Bill, 2015 - held, the provisions of S. 32AD are applicable for the investment made in FY 2015-16 i. e. AY. 2016-17. 468

The assessee had set up an undertaking for manufacture or production of an article or thing after 1st April, 2015 and the new asset was acquired and installed during the period beginning from 1st April, 2015 from which the date S. 32AD was introduced. The assessee claimed deduction u/s 32AD of the Act. The AO rejected the claim which was affirmed by the CIT (Appeals). On appeal, due to difference of opinion, the point of reference was made to the third member to decide the issue i.e. whether the assesee is entitled to deduction u/s 32AD(1), in respect of investment made in FY 2015-16. The third member held that the assessee is entitled for allowance under S. 32AD. Neither the S. 32AD nor Notification No. 61/2016/F. No. 142/13/2015, dt. 20th July, 2016 states that the deduction under S. 32AD is allowable only for the period starting from the date of notification. If the contention of the Revenue that the assessee is entitled to claim the benefit of S. 32AD only from the date of notification is accepted, then the condition of getting the benefit for a period five years from 1st April, 2016 is not fulfilled and

this cannot be the mandate of the legislation. Once the notification was issued under S. 32AD specifying the area to be a backward area, it relates back to 1st April, 2015 onwards. Therefore, the provisions of S. 32AD are applicable for the investment made in financial year 2015-16 i. e., AY. 2016-17. (AY. 20016-17)
Maheswari Mining & Energy (P) Ltd. v. DCIT (2024) 229 TTJ 121 / 236 DTR 321 / 38 NYPTTJ 402/ 162 taxmann.com 574 (TM) (Hyd) (Trib)

469 **S. 32AD: Investment in new plant or machinery in notified backward areas in certain States - Additional investment allowance - Notification specifying backward area relates back to 1-4-2015 - Entitlement to additional investment allowance - The notification is neither taxing nor exempting the tax either in full or in part to any class of assessees but it only specifies the details requisite for implementation of the section - Issuance of notification by the CBDT is only pursuant to the delegated legislation, but not a conditional legislation - Circular No. 19 of 2015, dt. 27-11-2015 (2015) 379 ITR 19 (St), Notification dated 20-7-2016 (2016) 386 ITR 6 (St))**
On appeal by the assessee, the Judicial Member held in favour of the assessee, while the Accountant Member affirmed the disallowance. On a reference to a Third Member allowing the appeal the Tribunal held that the undertaking was set up subsequent to 01. 04. 2015 and the new asset was acquired and installed during the period between 01. 04. 2015 and 31. 03. 2016. A combined reading of the Memorandum Explaining the provisions in the Finance Bill, 2015 as well as the CBDT Circular No. 19 of 2015 clearly mentioned that the provisions of S. 32AD were applicable from AY 2016-17 for a period of 5 years. Therefore, the provisions of S. 32AD of the Act, were applicable for the investment made in FY 2015-16, i.e., AY 2016-17. That the notification issued by the CBDT on 20. 07 2016 did not keep the operation of the provisions of S. 32AD of the Act in abeyance till 20. 07. 2016. The notification stating that it shall come into force as on the date of its publication in the Official Gazette cannot override the provisions of S. 32AD(1) of the Act. That since S. 32AD is a beneficial provision and the assessee fell in the beneficial provision, the provision as well as the notification needs to be interpreted liberally, i. e., in favour of the assessee and the assessee is entitled to deduction u/s 32AD. Held that S. 32AD(1) requires the executive to notify the areas constituting backward areas in the relevant States and to that extent it cannot be said that S. 32AD(1) is complete on its own. Even according to the Revenue, Parliament required the executive to issue the notification specifying what areas constitute the backward areas in the relevant States, but not in respect of the future date of promulgation or the provision nor with applicability or withdrawal of the provision to any class of persons, areas or properties. The provision itself is in the nature of beneficial legislation favourable to the assessee, and the notification neither brings the provision into force on any later day nor does it extend or exempt the operation of the provision to any class of persons, properties or areas. It only specifies details regarding the backward areas in the relevant States for implementation of the provision. The notification is neither taxing nor exempting the tax either in full or in part to any class of assessees but it only specifies the details requisite for implementation of the section. Issuance of notification by the CBDT is only pursuant to the delegated legislation, but not a conditional legislation(AY. 2016-17)
Maheswari Mining and Energy P. Ltd. v. ACIT (2024)116 ITR 75 / 162 taxmann.com 574 (TM) (Hyd)(Trib)

S. 35 : Expenditure on scientific research - Weighted deduction - In-house scientific research - Expenditure on clinical trials conducted outside approved - Clinical research outside facility would also be eligible for weighted deduction under S. 35(2AB). [S. 35(2AB)] 470

Held that prior to 1st July, 2016 there was no requirement by DSIR to certify the amount eligible for weighted deduction and therefore, assessee cannot be denied weighted deduction for the reason that the amount claimed is more than what is mentioned in Form 3CL. Accordingly, the amount as mentioned in Form 3CL as expenses incurred towards clinical research outside the facility would also be eligible for weighted deduction under S. 35(2AB). (AY. 2010-11)

Micro Labs Ltd v. ACIT (2023) 37 NYPTTJ 46/ (2024) 230 TTJ 625 (Bang)(Trib)

S. 35 : Expenditure on scientific research - Purchase of capital equipment for research facility - Clinical trial expenditure allowed by Tribunal in earlier years which is upheld by High Court - Order of CIT(A) deleting the addition is affirmed - CBDT Circular No. 14(Xl-35), Dated 11-4-1955. [S. 35(2AB)] 471

Held that the CIT (Appeals) correctly appreciated the fact and found the capital items were used in the research facility only and that the impugned capital expenditure was approved by the DSIR as evidenced by the certificate issued by it in form 3CL. When the specified authority itself had approved the incurrence of the capital expenditure for the purpose of in-house research, there was no question of the AO doubting it or arriving at a finding that the capital expenditure was not incurred in the assessee's research and development facility. Order of CIT(A) is affirmed (AY. 2008-09, 2009-10)

Cadila Pharmaceuticals Ltd. v. ACIT (2024)115 ITR 428 / 162 taxmann.com 229 (Ahd)(Trib)

S. 35: Expenditure on scientific research - DSIR approved only part of expenditure claimed - Prior to 1-4-2016 there is no requirement of quantification of eligible expenditure incurred on in-house research and development facility that has to be approved by prescribed authority - Entitled to 200% of actual expenditure incurred on Scientific Research. [S. 35(2AB] 472

Held that S. 35(2AB) is amended on April 1, 2016 whereby the quantum of eligible expenditure incurred on in-house research and development facility is required to be quantified by the prescribed authority. Prior to April 1, 2016, there was no such requirement for claiming the deduction. Merely because the DSIR had quantified such expenditure in the current year, which was prior to April 1, 2016. Disallowance is deleted. The AO is directed to allow at 200%. of the actual expenditure incurred on scientific research in its in-house research and development facility. (AY. 2013-14, 2017-18)

Pharmanza Herbal P. Ltd. v. Dy. CIT (2024)115 ITR 612 / 164 taxmann.com 1297 (Ahd)(Trib)

S. 35 : Expenditure on scientific research- In-house scientific research and development - Weighted deduction - Expenditure attributable to income earned from contract research is also entitled to weighted deduction - Matter remanded. [S. 35(2AB)] 473

Held that in-house scientific research and development is entitled to weighted deduction. Expenditure attributable to income earned from contract research is also entitled to weighted deduction. Matter remanded. (AY. 2010-11)

Cadila Pharmaceuticals Ltd. v. ACIT (2024) 115 ITR 51 (SN)/ 162 taxmann.com 229 (Ahd) (Trib)

474 **S. 35 : Expenditure on scientific research - Weighted deduction - Deduction allowed to extent certified by DSIR-Matter remanded for verification. [S. 35(2AB)]**
Followed earlier year order of Tribunal and expenditure u/s 35(2AB) in the nature of exhibit batches was not allowed. In terms of this decision, the claim of the expenses was rejected. The addition to the extent the research and development expenses were recognised by the DSIR for the year in question was deleted. (AY. 2012-13)
Intas Pharmaceuticals Ltd. v. ACIT (2024)114 ITR 546 (Ahd)(Trib)

475 **S. 35 : Expenditure on scientific research-Weighted deduction-Allowable as deduction. [S. 35(2AB)]**
Held that the assessee had undertaken the research work and had spent certain amount during the relevant AYs on scientific research, not being the capital expenditure in the nature of land and building. The AO's reliance solely on the DSIR report, without considering the detailed books of account and certification by a chartered accountant, is not justified. Deduction is allowed. (AY. 2016-17)
AMI Life Sciences P. Ltd. v. ACIT (2024)114 ITR 7 (SN)(Ahd)(Trib)

476 **S. 35 : Expenditure on scientific research - Capital expenditure allowable as deduction - Disallowance of balance amount is affirmed as per order of CIT(A). [S. 35(2AB]**
Held that the matter regarding the assessee's claim of weighted deduction u/s 35(2AB) was decided by the Tribunal in the assessee's favour in its own case for earlier AYs. The CIT (Appeals) had not erred in facts and in law in making any disallowance thereto. As for the other items of expenditure under this section, weighted deduction in respect of foreign patent filing expenses to the extent it was of capital nature was allowed and the balance amount was disallowed in terms of the order of the CIT (Appeals). Disallowance of balance amount is affirmed as per order of CIT(A). (AY. 2009-10, 2010-11, 2011-12)
Intas Pharmaceuticals Ltd. v. ACIT (2024)114 ITR 434 (Ahd)(Trib)

477 **S. 35 : Expenditure on scientific research - Capital gains - Business discontinued - Deduction u/s 35(1)(ii) can be claimed only from income falling under head Profits and gains of business or profession u/s 28- Not entitled to claim deduction from capital gain. [S. 28(i), 35(1(ii), 45]**
Assessee-company earned LTCG on sale of factory land. During relevant AY, assessee made a donation to a trust and claimed weighted deduction u/s 35(1)(ii) on said donation. AO disallowed deduction on ground that there was discontinuation of business after sale of factory land. Assessee claimed that it continued its operation even after the sale of factory land. CIT(A) affirmed the order of the AO. On appeal the Tribunal held that no lease agreement or confirmation from the buyer of factory land, had been submitted to substantiate the claim of carrying on business at the same premises. Since there was loss under head income from business or profession and assessee had discontinued its business after selling factory land, assessee could not claim deduction u/s 35(1)(ii) from such business loss. Since assessee earned huge capital gains on sale of factory land and there was immediate and proximate nexus between impugned donation and capital gain, assessee was not entitled to claim deduction u/s 35(1)(ii) from capital gain chargeable to tax u/s 45. (AY. 2015-16)
Sarvoday Ply Industries. v. DCIT (2024) 209 ITD 42 (Surat) (Trib.)

S. 35 : Expenditure on scientific research - Weighted deduction - DSIR not certified part of expenses and did not furnish reason-AO is directed to examine issue a fresh thereafter. [S. 35(2AB), R. 6(7A)] 478

Held, that on a combined reading of S. 35(2AB), (3) read with rule 6(7A), the reports mentioned therein would cover the report to be furnished by the DSIR, even though the reports are forwarded directly to the CIT. The amendment made in sub-section (3) may be considered as enabling provision which triggered inserting of rule 6(7A), which was amended enabling DSIR to quantify the expenditure incurred. If any question arises u/s 35 of the Act as to whether and if so, to what extent any activity constitutes or constituted scientific research, S. 35(3) provides for making a representation to the prescribed authority. Since, the DSIR had not certified part of the expenses incurred by the assessee and since it did not furnish any reason for doing so, there was violation of principles of natural justice. Unless the prescribed authority furnishes the reason for not certifying the expenses, it would not be possible for the Tribunal to adjudicate this issue. Accordingly, the assessee as well as the AO were to take appropriate action to ascertain the reasons for non-certification. After ascertaining them, the AO may examine this issue afresh and take appropriate decision in accordance with law, after affording adequate opportunity of being heard to the assessee.). (AY. 2017-18, 2018-19)

Dy. CIT v. Reliance Industries Ltd. (2024)109 ITR 180 (Mum)(Trib)

S. 35 : Expenditure on scientific research - Approval was pending -Issue was restored to AO. [S. 35(2AB), Form No 3CM] 479

Assessee had claimed research and development expenses incurred during the year under consideration for its units. AO disallowed said expenses on ground that no approval in prescribed Form no. 3CM had been enclosed before AO. On appeal the ITAT held that since, assessee had applied for approval in Form No. 3CM which was still pending, issue was to be restored to AO for providing an opportunity to assessee to furnish approval of competent authority in prescribed manner for claiming deduction u/s 35(2AB). (AY. 2005-06)

Piramal Enterprises Ltd. v. DCIT (2024) 205 ITD 636/116 ITR 261 (Mum) (Trib.)

S. 35A : Acquisition - Patent rights - Copy rights - Trade mark - Merger - Eligible to claim deduction. 480

Assessee-company had claimed deduction u/s 35A qua acquisition of trademark by SPPL which had been merged with assessee. AO disallowed the same. On appeal the Tribunal held that in view of decision of Tribunal in assessee's own case that trademark is not alien to patent right as there is direct link between patent right and trademark, assessee was eligible to claim deduction u/s 35A. (AY. 2005-06)

Piramal Enterprises Ltd. v. DCIT (2024) 205 ITD 636/116 ITR 261 (Mum) (Trib.)

S. 35ABB: Licence to operate telecommunication services - Classification of royalty payment as revenue expenditure - Appeal de-tagged for specific consideration. [S. 37(1)] 481

The assessee sought recall of the Supreme Court's judgment in *CIT v. Bharti Hexacom Ltd (2023) 155 taxmann.com 322/ 458 ITR 593 (SC)* and requested de-linking of its appeal from the batch of cases disposed of on 16-10-2023. While the allowability of varied license fees as capital expenditure was finalized in the earlier judgment, the issue of whether

royalty payments to the Wireless Planning Commission (WPC) should be treated as revenue expenditure was neither argued nor decided in that judgment. The Supreme Court de-tagged the appeal from the batch and restored it to be adjudicated separately on the merits of the case for the treatment of royalty payments as revenue or capital expenditure.
PCIT v. Vodafone Idea Ltd. (2024) 301 Taxman 316 (SC)
Editorial: CIT v. Bharti Hexacom Ltd. (2023) 155 taxmann.com 322 / 458 ITR 593 (SC)

482 **S. 35AD: Deduction in respect of expenditure on specified business-Star rating-Granted four star rating by Ministry of Tourism after close of assessment proceedings-Certificate furnished during the appellate proceedings before CIT (Appeals)-Qualified as a specified business and eligible for deduction.**
Held that the hotel run by the assessee was not granted any star rating for the FY s relevant to the AYs 2017-18 to 2019-20, and subsequent to the close of the assessment proceedings, the assessee got the four star rating certificate on 14.12.2021 valid for the period starting 14.12.2021 to 13.12.2026 which was furnished during the course of appellate proceedings before the CIT (Appeals). The hotel being run by the assessee has been duly granted a four star rating certificate by the Ministry of Tourism, Government of India and thus, it qualified as a specified business for the purposes of claim of deduction u/s 35AD of the Act. Compliance with other conditions was not in dispute. The AO is directed to allow the deduction as so claimed by the assessee u/s 35AD of the Act. (AY. 2017-18 to 2019-20)
Khanna Infrabuild P. Ltd. v. Dy. CIT (2024)113 ITR 595/231 TTJ 530 (Chd)(Trib)

483 **S. 35AD: Deduction in respect of expenditure on specified business-Hospital-Survey-Revised return-Deduction claimed in revised return is allowable. [S. 35AD(2), 133A, 139(5)]**
Assessee-company ran a hospital. Subsequent to survey action u/s 133A, assessee filed revised return u/s 139(5) claiming deduction u/s 35AD for first time. AO held that benefit of S. 139(5) could not be claimed by a person who had filed fraudulent returns. He rejected claim of deduction u/s 35AD for reason that assessee failed to furnish any documentary evidence to prove that it satisfied all conditions laid down in S. 35AD(2). CIT(A) allowed the claim. On appeal, the Tribunal held that since assessee during appellate proceedings submitted all details of capital expenditure incurred before date of commencement of hospital which showed that it had more than hundred beds at relevant time and as it had filed original return in time as per provisions of S. 139(1), deduction u/s 35AD claimed for first time in revised return filed as per provisions of S. 139(5) is allowable. (AY. 2013-14)
ACIT v. Surat Life Care (P.) Ltd. (2024) 205 ITD 538 (Surat) (Trib.)

484 **S. 35D: Amortization of Preliminary expenses (General)-Claim of was granted by AO-Claim could not be disallowed in subsequent year by Commissioner through his revisionary powers without disturbing decision in initial year-No challenge is made against the rectification. order passed by revenue-SLP disposed as infructuous. [S. 154, 263, Art. 136]**
The assessee claimed amortization of preliminary expenses u/s 35D in AY 2007-08 which was allowed by the AO. However, for AY 2008-09, the Commissioner invoked

revisionary powers u/s 263 to disallow the claim on the ground that the assessee had wrongly claimed the deduction u/s 35D as it was not an industrial undertaking within the meaning of such expression as envisaged u/s 35D. The Hon'ble High Court held that once a claim u/s 35D is granted in the first year, it cannot be disallowed in subsequent years without disturbing the initial year's assessment. This action by the Commissioner was deemed invalid. The Revenue filed an SLP against the High Court's decision. The Hon'ble Supreme Court disposed of the SLP as infructuous as the rectification order passed u/s 154 of the Act which is against the Revenue for the AY 2008-09 has been made to the relied upon judgement. (AY. 2008-09)
CIT v. Subex Ltd. (2024) 301 Taxman 404 (SC)
Editorial: Subex Ltd. v. CIT-III (2021) 132 taxmann.com 96 /285 Taxman 350(Karn) (HC)

S. 35D : Amortisation of preliminary expenses-Initial public offer of shares expenses-Direct expenses incurred in connection with initial public offer of shares, it could not claim deduction of indirect expenses incurred in connection with same object as revenue expenses. [S. 37(1)] 485
Assessee-company incurred certain expenditure in relation to initial public offer of shares such as advertising, travelling, postage, market research, etc. and claimed deduction of same as revenue expenditure AO invoking provisions of S. 35D disallowed expenditure. Tribunal affirmed the order of the AO. On appeal the Court held that since S. 35D permitted only certain capital expenses as deductible and not others and assessee had already been granted benefit of deduction of direct expenses incurred in connection with initial public offer of shares, it could not claim deduction of indirect expenses incurred in connection with same object as revenue expenses. (AY. 2008-09)
Inditrade Capital Ltd. v. CIT (2024) 301 Taxman 638 (Ker.)(HC)

S. 35DD:Amortisation of expenditure-Amalgamation-Merger expenses-The year in which the High Court order was received can be treated as the 1st year from which the merger expenses can be claimed u/s 35DD and allow to claim the said expenses in next 4 Assessment years. 486
The Assessee had undergone amalgamation by order of the Calcutta High Court dated 26.10.2006 and the Bombay High Court dated 01. 12. 2006, which was to be effective from 01.04.2005. The Assessee claimed 2/5th of the expenses incurred during the present AY 2007-08 u/s 35DD in the computation of income by stating that since the Assessee could not claim the deduction in AY 2006-07, the Assessee has claimed 2/5th i. e. 1/5th for A. Y. 2006-07 & 2/5th A. Y. 2007-08. The Tribunal observed that S. 35DD is unambiguous and there is no provision u/s 35DD to claim 2/5th of the expenditure incurred towards amalgamation / demerger. The Assessee had also raised an additional ground to treat AY 2007-08 as the first year from which the merger expenses are claimed u/s 35DD and allow the Assessee to claim the expenses in next 4 Assessment years subsequent to AY 2007-08. The Tribunal found merit in this contention and allowed the same. (AY. 2007-08)
United Spirits Ltd. v. Jt. CIT [2024] 109 ITR 37 (SN) (Mum)(Trib)

487 **S. 36(1)(ii): Bonus or commission-Commission paid to director-Services rendered-Allowable as business expenditure.**
Held that commission paid to director for services rendered, allowable as business expenditure.
AMI Life Sciences P. Ltd. v. ACIT (2024)114 ITR 7 (SN)(Ahd)(Trib)

488 **S. 36(1)(ii):Bonus or commission-Directors had declared salary and bonus-Entitled to claim deduction in respect of payment of bonus to its directors.**
Held that in the line of business of the assessee, wherein it was engaged in dealing in computers, networking solutions, and providing maintenance and facility management services, it could not be denied that without the dedicated efforts the turnover from sales and services could not have increased. Thus, the bonus was a reward for the work of the promoter directors, who were actively involved in the day-to-day affairs of the company, in addition to the salary paid to them. Accordingly, the assessee is entitled to claim deduction u/s 36(1)(ii) of the Act in respect of payment of bonus to its directors. Central Board Of Direct Taxes Instruction No. 20 Of 2015, Dated 29-12-2015 (2016) 380 ITR 36 (St). Relied on *Loyal Motor Services Co. Ltd v. CIT (1946) 14 ITR 647 (Bom(HC), Distinguished Dalal Broacha Stock Broking P. Ltd v. Addl. CIT(2011)10 ITR 357 /11 taxmann.com 426 (SB) (Mum) (Trib)* (AY. 2015-16)
Micropoint Computers P. Ltd. v. Dy. CIT (2024)111 ITR 89 (SN)/232 TTJ 1049 (Mum) (Trib)

489 **S. 36(1)(iii) : Interest on borrowed capital-Own interest free funds-Order of High Court affirming the order of the Tribunal is up held-SLP of revenue dismissed. [Art. 136]**
AO disallowed interest paid on borrowed capital on ground that assessee had advanced interest free funds. Tribunal deleted the disallowance. On appeal High Court held that where assessee had not utilized interest bearing borrowed funds for making interest-free advances as assessee had its own interest-free fund far in excess of interest-free advance, disallowance of interest on borrowed capital was to be deleted. SLP filed by the Revenue is dismissed. (AY. 2011-12)
PCIT, Central v. Shapoorji Pallonji and Co. Ltd. (2024) 300 Taxman 182 (SC)
Editorial : PCIT, Central v. Shapoorji Pallonji and Co. Ltd. (2024) 164 taxman.com 707 (Bom)(HC)

490 **S. 36(1)(iii) : Interest on borrowed capital-Own interest free funds-Order of Tribunal deleting the disallowance is affirmed. [S. 260A]**
AO disallowed interest paid on borrowed capital on ground that assessee had advanced interest free funds. Tribunal deleted the disallowance. On appeal High Court held that where assessee had not utilized interest bearing borrowed funds for making interest-free advances as assessee had its own interest-free fund far in excess of interest-free advance, disallowance of interest on borrowed capital is not justified. Order of Tribunal is affirmed. (AY. 2011-12)
PCIT, Central v. Shapoorji Pallonji and Co. Ltd. (2024) 164 taxman.com 707 (Bom)(HC)
Editorial : SLP of Revenue is dismissed, PCIT, Central v. Shapoorji Pallonji and Co. Ltd. (2024) 300 Taxman 182 (SC)

S. 36(1)(iii) : Interest on borrowed capital –Loan to subsidiary-Subsidiary was incurring losses-Loan from banks at rate 14 to 16 %-Advance to subsidiary at rate of 6%-No disallowance was made in earlier years-Rule of consistency-Order of Tribunal is affirmed-No substantial question of law. [S. 260A] 491

Assessee had taken loan from banks at interest at rate of 14 to 16% per annum. It advanced loan to its wholly owned subsidiary company at rate of 6% only. When assessee was asked to explain why commercial interest rate was charged from subsidiary company, assessee stated that since subsidiary company was incurring losses, management decided to charge lesser rate of interest. AO made the addition being shortage in interest recovered from subsidiary. Tribunal held that loan was given in earlier financial year and assessee had sufficient own funds to give loan and further no disallowance was made in earlier AY. Disallowance was deleted by following the rule of consistency as there was no change in law and facts. High Court affirmed the order of the Tribunal. (AY. 2010-11)

PCIT v. Uniparts India Ltd. (2024) 298 Taxman 212/ (2025) 475 ITR 728 (Delhi)(HC)

S. 36(1)(iii) : Interest on borrowed capital-Business of retail lending as well as Long Term finance for construction of homes-Deduction claimed on interest on Long Term housing loan, which has been recalculated by the AO based on total receipt of the business-Rule of consistency is followed-Order of Tribunal deleting the addition is affirmed. [S. 260A] 492

The assessee is a subsidiary of PNB. The deduction has been claimed u/s 36(1)(viii) taking into account percentage of total interest received on Long Term housing loan has been upheld by the Tribunal stating that the said methodology has been adopted by the assessee consistently and the same was accepted by the Revenue without any objection. The Revenue had not filed appeal challenging the deduction allowed in the preceding years. Following the judgment of the Supreme Court in *Pr. CIT v. Maruti Suzuki India Ltd. (2019) 107 taxmann.com 375* / *265 Taxman 215* / *416 ITR 613*, Revenue's appeal dismissed. (AY. 2010-11)

PCIT v. PNB Housing Finance Ltd. (2023) 146 taxmann.com 445 / *(2024) 461 ITR 476 (Delhi)(HC)*

Editorial : SLP of Revenue dismissed, PCIT v. PNB Housing Finance Ltd [2024] 297 Taxman 229* / *461 ITR 481 (SC)

S. 36(1)(iii) : Interest on borrowed capital-Interest free advance to subsidiary-Allowable as deduction on commercial expediency. [S. 37(1), 260A] 493

Dismissing the appeal of the Revenue the Court held that interest free advance to subsidiary for the purpose of business. Interest is allowable as deduction. (AY. 2006-07). (ITA No. 927 of 2018 dt. 31-1-2024)

PCIT v. ESSEL Infra Projects Ltd (Former PAN India Paryatn Ltd (2024) BCAJ-March-P. 47 (Bom)(HC)

S. 36(1)(iii): Interest on borrowed capital - Interest is not charged on inter-corporate deposits made with group companies - No evidence of commercial expediency - Disallowance is justified. 494

Held that the assessee has advanced borrowed funds to its sister concerns without charging any interest, hence AO was justified in disallowing the interest paid by it on

inter corporate deposits in excess of the interest received on inter-corporate deposits made with group entities. (AY. 2017-18)
Nayara Energy Ltd. v. ACIT (2024) 232 TTJ 353 / 244 DTR 89/ 38 NYPTTJ 1162 (Mum)(Trib)

495 **S. 36(1)(iii): Interest on borrowed capital – Capital work in progress - Out of own funds - No disallowance of interest can be made on borrowed amount. [S. 37(1)]**
Held that the assessee has invested own funds on capital work in progress, hence, no disallowance of interest can be made on borrowed amount. (AY. 2012-13)
ACIT v. Vizag Seaport (P) Ltd. (2024) 229 TTJ 73) (UO) (Visakha (Trib)

496 **S. 36(1)(iii) : Interest on borrowed capital-Order of CIT(A) is affirmed.**
Held that that as the facts were identical with earlier year. The order of CIT(A) is affirmed. (AY. 2008-09, 2009-10)
Cadila Pharmaceuticals Ltd. v. ACIT (2024)115 ITR 428 / 162 taxmann.com 229 (Ahd) (Trib)

497 **S. 36(1)(iii) : Interest on borrowed capital-Higher rate of interest 16% to bank on loans-Rate charged to subsidiaries lesser rate of 6%-Disallowance is deleted.**
Tribunal following the order of earlier year disallowance is deleted. Followed, *Uniparts India L td. v. Dy. CIT 2021 SCC OnLine ITAT 580 (Delhi)(Trib)* (AY. 2010-11)
ACIT v. Uniparts India Ltd(2023) 150 taxmann.com 142 / (2024)115 ITR 473 (Delhi)(Trib)
Editorial : Affirmed in PCIT v. Uniparts India Ltd(2024) 298 Taxman 212 (Delhi)(HC)

498 **S. 36(1)(iii) : Interest on borrowed capital-Sufficient interest free funds-Disallowance is deleted.**
Held that the assessee had sufficient interest free funds. Disallowance is deleted. (AY. 2010-11)
Cadila Pharmaceuticals Ltd. v. ACIT (2024) 115 ITR 51 ((SN)/ 162 taxmann.com 229 (Ahd)(Trib)

499 **S. 36(1)(iii): Interest on borrowed capital - Interest free funds - Capital withdrawn - Addition is deleted.**
Held that if there is sufficient interest-free funds available with the assessee and such funds were advanced without charging any interest, the disallowance u/s 36(1)(iii) on account of notional interest was unjustifiable. As the assessee's interest-free funds were adequate to cover the amounts overdrawn by the partners, the addition made by the AO u/s 36(1)(iii) is not valid. (AY. 2018-19)
Dy. CIT v. Avinash Builders (2024)114 ITR 324 (Raipur)(Trib)

500 **S. 36(1)(iii) : Interest on borrowed capital-Interest paid on cash credit account-Investments in immovable properties and shares of other companies-Business expenditure. [S. 37(1)]**
Held that the funds remained invested in immovable properties and shares of other companies and the investment under the head "debtors" would not debar the assessee from the claim of interest expenses thereon since the investment was in productive

assets related to the assessee's business. As a result, the addition made by the AO for the year in question was to be deleted. (AY. 2015-16)
Dy. CIT v. Guru Nanak Milk Products (2024)114 ITR 344 /232 TTJ 325 (Amritsar)(Trib)

S. 36(1)(iii) : Interest on borrowed capital-Capital expenditure on plant and machinery, electrical installation and other fixed assets-Accounted s capital work-in-progress-Disallowance of interest is not warranted. 501
Held that where huge funds were available with the assessee without any interest liability and there was no evidence to hold that borrowed money was utilised for the purpose of making capital work-in-progress advances, no disallowance of interest was warranted. There was no infirmity in the order of the CIT (Appeals). (AY. 2009-10, 2010-11, 2011-12)
Intas Pharmaceuticals Ltd. v. ACIT (2024) 114 ITR 434 (Ahd)(Trib)

S. 36(1)(iii) : Interest on borrowed capital-Trade receivable-Borrowed fund is used for the purpose of business-Notional interest cannot be charged. 502
Held that the assessee had demonstrated that the borrowed funds were used for business purposes, and the conditions laid out in S. 36(1)(iii) were met. The outstanding amounts with the holding company and other customers were part of normal business transactions, with no interest charged in alignment with industry practices. Given the regular business transactions and fluctuating balances, the question of notional interest did not arise. Order of CIT(A) is affirmed. (AY. 2015-16)
ACIT v. Gujarat Insecticides Ltd. (2024)114 ITR 12 (SN)(Ahd)(Trib)

S. 36(1)(iii) : Interest on borrowed capital-Advance paid to director-Matter remanded to ascertain availability of sufficient interest-free funds. 503
Held that the assessee submitted its balance-sheet to confirm the availability of interest-free funds with the assessee for the year under consideration. These documents were not made available to the authorities and were very relevant for adjudicating the matter. Accordingly, the matter is remanded to the AO to ascertain availability of sufficient interest-free funds. (AY. 2014-15)
Moonlight Properties P. Ltd. v. ACIT (2024)113 ITR 705 (Chd)(Trib)

S. 36(1)(iii) : Interest on borrowed capital-Interest free advances-Sufficient own capital and free reserves-Disallowance of interest is deleted. 504
Assessee-company had advanced interest free loan to its sister concern. AO disallowed proportionate interest expenditure. CIT(A) up held the order of the AO. On appeal the ITAT held that since assessee had sufficient own capital and free reserves and surpluses which far exceeded the amount of interest free advance given to sister concern, disallowance is deleted. (AY. 2021-22)
Capricorn Lifestyle (P.) Ltd. v. DCIT (2024) 209 ITD 14 (Pune) (Trib.)

S. 36(1)(iii) : Interest on borrowed capital-Interest free loan-Share capital and reserves and surplus far exceeding interest-free advances-No disallowance can be made-Matter remanded. 505
During year, assessee had given loans and advances to various parties. AO had disallowed interest on borrowed capital on the ground that borrowed funds were utilized

for non-business purposes CIT (Appeals) confirmed disallowance. Held that assessee is having share capital and reserves and surplus fa r exceeding the advances given, and that so, since assessee had sufficient own funds, no disallowance was called for. Matter remanded. (AY. 2013-14, 2014-15)
DCIT v. Stylam Industries Ltd. (2024) 209 ITD 75 (Chd) (Trib.)

506 **S. 36(1)(iii) : Interest on borrowed capital-Loans given to related parties interest-free-Having sufficient funds to meet investment-Disallowance is deleted. [S. 37(1)]**
Held that the assessee had sufficient funds to meet the investment, therefore, the presumption would arise that the investment was made out of funds so available with the assessee. No disallowance can be made in respect of the amount advanced to related parties. (AY. 2013-14)
Lakozy Motors P. Ltd. v. Dy. CIT (2024)110 ITR 19 (SN)(Mum)(Trib)

507 **S. 36(1)(iii) : Interest on borrowed capital-Interest paid to related parties higher than interest paid to banks-Disallowance is deleted. [S. 37(1)]**
Held that interest had to related parties cannot be disallowed only on the ground that the interest paid was higher than the bank interest. Addition is deleted. (AY. 2013-14, 2014-15)
Il and Fs Energy Development Ltd. v. Asst. CIT (2024)110 ITR 23 (SN) (Delhi)(Trib)

508 **S. 36(1)(iii) :Interest on borrowed capital-Consistent methodology Interest-free advance given to an individual for the purpose of business was held to be genuine and allowable.**
The Hon'ble Tribunal held that the advance was indeed for business purposes and that the assessee had successfully recovered the amount through legal means and ably supported substantial evidence. Deletion of disallowance is affirmed. (AY. 2012-13, 2013-14)
ITO v. Jamna Auto Industries (2024) 111 ITR 569 /229 TTJ 209/239 DTR 57 (Chd)(Trib.)

509 **S. 36(1)(iii) : Interest on borrowed capital-Work-in-progress-Out of own funds and borrowed funds-Disallowance is deleted.**
Held that the AO had worked out the disallowance based on the closing balance of the capital work-in-progress at the rate of 12%. While doing so, the AO had ignored the availability of the assessee's own funds and had wrongly assumed that the addition to the capital work-in-progress was entirely out of borrowed funds. Addition is deleted. (AY. 2013-14)
Gujarat Infrapipes P. Ltd. v. Dy. CIT (2024)111 ITR 47 (SN)(Ahd)(Trib)

510 **S. 36(1)(iii) :Interest on borrowed capital-Advanced funds for commercial purposes without charging interest-Advanced from interest free funds-Order of CIT(A) confirming the disallowance is deleted.**
Assessee advanced funds to three parties for commercial purposes without charging interest. Since no interest was charged by assessee on such advances made to above parties, AO added back an amount u/s 36(1)(iii). CIT(A) affirmed the order of the AO.

On appeal the assessee contended that advances were for business dealings and were funded by interest-free loans, as shown in the audited balance sheet. Tribunal held that there was neither any reason nor any material to disbelieve figures contained in audited balance sheet, particularly availability of unsecured loans (free of interest) duly reflected in balance sheet under unsecured long-term borrowings, which was sufficient to meet advances given to parties in question. Addition is deleted. (AY. 2015-16)
DCIT v. Apex Fibre India Ltd. (2024) 207 ITD 504 (Amritsar)(Trib.)

S. 36(1)(iii) : Interest on borrowed capital-Perpetual non-convertible debentures-Debentures as appropriation out of profits in financial statements-Debentures repaid in exercise of call option-Interest allowable as deduction. 511
Held that the debentures were actually repaid and the interest on debentures was allowable as an expenditure u/s 36(1)(iii) of the Act. (AY. 2019-20)
Tata Steel Ltd. v. Dy. CIT (2024)109 ITR 18 (Mum) (Trib)

S. 36(1)(iii) :Interest on borrowed capital-Loans and advances-Own funds are more than interest bearing funds-No disallowance can be made. 512
Assessee had advanced interest-free loans/advances to outside parties. AO held that since 55. 05% of all funds were from interest-bearing sources, hence it was fair and reasonable to hold that 55. 05% of claimed interest-free advances had been sourced from interest-bearing funds and to that extent, interest-bearing funds had been shifted to cost-free advances. AO disallowed interest paid to extent of Rs. 52. 30 lakhs out of total interest paid of Rs. 66. 05 lakhs. CIT(A) affirmed the order of the AO. On appeal the Tribunal held that since assessee's own funds were more than interest-free advances, disallowance is deleted. (AY. 2017-18) AY. 2017-18)
Jasmatbhai Nanubhai Vidiya v. DCIT (2024) 206 ITD 44 (Surat)(Trib.)

S. 36(1)(iii) :Interest on borrowed capital-Loan raised from bank for repayment of capital-Allowable as deduction. 513
Assessee-firm had borrowed a loan from the bank and raised fresh capital from the incoming partner to settle a debt/capital account of retiring/outgoing partners. AO characterized settlement as a family arrangement and disallowed interest paid by assessee-firm to capital account of partners and loan borrowed from Punjab National Bank u/s 36(1)(iii). CIT(A) affirmed the disallowance. On appeal, the ITAT held that when asset was owned by partnership firm, any settlement out of assets belonging to firm to outgoing partners, could not be considered as settlement of family property and just because, partners were family members and merely because assets were revalued before reconstitution of partnership firm, could not be a reason for AO to treat settlement of firm properties among partners as settlement of family property. Settlement of capital account of outgoing partners became debt of partnership firm and discharge of said debt out of borrowed funds assumed character of loans/funds borrowed for purpose of business of assessee. Since, loan borrowed from bank and capital raised from incoming partner was for purpose of business of assessee, any interest paid on said loan and capital account was nothing but interest paid on loan borrowed for purpose of business of assessee and allowable u/s 36(1)(iii). (AY. 2007-08)
Ariff & Co. v. ACIT (2024) 205 ITD 84/229 TTJ 434 (Chennai) (Trib.)

514 **S. 36(1)(iii) : Interest on borrowed capital –Interest-Banks and Public Financial institutions-Treatment in books of account-Allowable as deduction in the year in which the payment is made irrespective of its treatment in books of account. [S. 43B, 145]**

Held that when the borrowed amounts from Banks and Public Financial institutions which are used for the purpose of business, the interest paid would be allowable as deduction as per provisions of S. 36(1)(iii) read with provisions of S. 43B in year in which payment was made irrespective of its treatment in books of account. (AY. 2016-17)

DCIT v. BPTP Ltd. (2024) 204 ITD 41 (Delhi)(Trib.)

515 **S. 36(1)(iii) : Interest on borrowed capital-Interest free advances-Sufficient funds-No disallowance can be made.**

Assessee-company had given a security deposit to its subsidiary company. AO held that there was possibility of assessee having utilised interest bearing funds for the purpose of giving interest free deposit. CIT(A) confirmed the disallowance on pro rata basis. On appeal the Tribunal held that the assessee had share capital and reserves and surplus of Rs. 119.03 crores which was more than interest free advance of Rs. 100.12 crores given by assessee. Since the assessee had sufficient own funds for giving interest free deposit, disallowance is deleted. (AY. 2016-17)

PNP Maritime Services (P.) Ltd. v. DCIT (2024)204 ITD 810 /231 TTJ 31 (Mum) (Trib.)

516 **S. 36(1)(iii) : Interest on borrowed capital-Addition made are unjustified as the balances reflect business transactions, & not loans and advances. [S. 37(1)]**

The Revenue contended that the assessee has not shown interest income on loans and advances given to related parties. The Revenue argues that interest @ 12% should be imputed on the average of opening and closing balances of the loans and advances. The assessee, however, contends that the payments are made in congruence to the terms and conditions of the agreements and that no interest income was accrued or received. The ld. CIT(A) verified the assessee's contention and deleted the addition. The Hon'ble Tribunal observed that the outstanding balances are outcome of the business transactions and not loans and advances and further held that the AO has erred in imputing an imaginary income which is neither accrued nor has arisen to the Assessee. (AY. 2016-17)

Asst. CIT v. Sahara India Financial Corpn. Ltd. [2024] 109 ITR 33 (SN) (Delhi) (Trib)

517 **S. 36(1)(va) : Any sum received from employees-Payment was made after due date prescribed under respective Acts-Order of Tribunal disallowing the expenses is affirmed. [S. 260A]**

AO disallowed payments made by assessee towards employees' contribution to PF and ESI after the due date as prescribed under Explanation (1) to S. 36(1)(va) but before the due date of filing of return of income. Tribunal confirmed the disallowance. On appeal the Court held that the Tribunal is justified in confirming disallowance made by AO. (AY. 2008-09)

Inditrade Capital Ltd. v. CIT (2024) 301 Taxman 638 (Ker.)(HC)

S. 36(1)(va) : Any sum received from employees-Late deposit of employee's contribution to PF and ESI-Disallowance is justified-Assessment order u/s 143(1)(a) would make no difference. [S. 143(1)(a), 260A] 518

Assessee filed its return of income. AO made disallowance u/s 36(1)(va) towards late deposit of employee's contribution to PF and ESI by assessee. CIT(A) and Tribunal upheld the disallowance. On appeal the court held that since assessee had not deposited such sum within stipulated time as prescribed in respective Acts, in view of decision in case of *Checkmate Services (P.) Ltd. v. CIT [2022] 143 taxmann.com 178/290 Taxman 19/448 ITR 518 (SC)* disallowance on account of employees contribution to ESI and PF u/s 36(1)(va) was justified and fact that assessment order was made u/s 143(1)(a) would make no difference. (AY. 2019-20)

Rohan Korgaonkar v. Dy. CIT (2024) 298 Taxman 159 (Bom.)(HC)

S. 36(1)(va): Any sum received from employees-Delayed payment of employees contribution to Employees' State Insurance Corporation-Disallowance is affirmed. [S. 43B] 519

Held that Delayed payment of employees contribution to Employees' State Insurance Corporation, disallowance is affirmed. (AY. 2010-11)

ACIT v. Uniparts India Ltd. (2023) 150 taxmann.com 142 / (2024)115 ITR 473 (Delhi)(Trib)

S. 36(1)(va): Any sum received from employees-COVID-19-Delay in depositing the amount-EPF Organisation had waived levy of penal damages for delayed payment during lockdown-Disallowance is deleted. [S. 43B] 520

Held that the delayed deposit of employees' contributions towards PF and ESI for months of April and May 2020 during peak period of COVID-19 pandemic when lockdown was imposed by government, in view of fact that EPF Organisation had waived levy of penal damages for delayed payment during lockdown. Accordingly the delay would not be treated detrimental to assessee. Hence, the addition is deleted. (AY. 2021-22)

Diamour Jewels (P.) Ltd v. CPC (2024) 208 ITD 189/232 TTJ 389 (Mum) (Trib.)

S. 36(1)(va): Any sum received from employees-Deduction only on actual payment-Contribution to provident fund and Employees' State Insurance-Payment made beyond due date-Not deductible. [S. 2(24(x) 43B] 521

Held that the payments to employees' contribution to provident fund and employees' State insurance not made on or before the due date for filing return of income u/s 139(1) were not eligible for deduction u/s 36(1)(va) read with S. 2(24)(x). The CIT (Appeals), without appreciating the relevant facts, simply deleted the AO's additions. Therefore, the findings of the CIT (Appeals) were reversed, and the additions made by the AO were upheld. (AY. 2010-11, 2012-13, 2013-14, 2016-17, 2017-18)

Dy. CIT (OSD) v. Aspire Systems India P. Ltd. (2024) 110 ITR 1 / 232 TTJ 387 (Chennnai) (Trib)

522 **S. 36(1)(vii) :Bad debt-Amounts should be actually written off in profit and loss account-Allowable as deduction.**
Held that once the bad debts were written off by debiting the sum in the profit and loss account and by giving a corresponding credit in the loans and advances/debtors on the assets side of the balance-sheet, the requirement under law was satisfied. It was not necessary to make a corresponding entry towards each individual account separately to qualify as a valid write off. The Department had not disputed the entries in the profit and loss account and balance-sheet. Once the sums were written off in the books maintained for the purpose of the Act and debited in the profit and loss account and satisfied the other requirement, it was sufficient to hold that the assessees were entitled to the allowance. (AY. 2003-04 to 2014-15)
Shriram Transport Finance Co. Ltd. v. ITO (OSD) (2024)460 ITR 66 (Mad)(HC)

523 **S. 36(1)(vii) : Bad debt-Provision for bad debts-Bad debts written Off-Bad debts written off relating to non-rural advances is not required to be adjusted against provision for bad and doubtful debts allowed u/s 36(1)(viia)-Excess provision matter remanded. [S. 36(1)viia)]**
Held that the bad debts written off relating to non-rural advances was not required to be adjusted against provision for bad and doubtful debts allowed u/s 36(1)(viia) of the Act and thus, the AO was to recompute the deduction in respect of write off of non-rural debts without any adjustment to credit balance in the provision for bad and doubtful debts account in respect of rural advances. As regards excess provision the matter is remanded for verification. (AY. 2015-16 to 2017-18)
City Union Bank Ltd. v. Dy. CIT (2024)112 ITR 337 /229 TTJ 139 (Chennai)(Trib)

524 **S. 36(1)(vii) : Bad debt-Income pertaining to bad debts written off offered to tax in earlier years-Order of CIT(A) remanding the matter to AO is affirmed.**
Held that The CIT (Appeals) had rightly directed the AO to verify whether the amounts claimed as bad debts were included in the income for the earlier AYs. (AY. 2010-11, 2012-13, 2013-14, 2016-17, 2017-18)
Dy. CIT (OSD) v. Aspire Systems India P. Ltd. (2024) 110 ITR 1 / 232 TTJ 387 (Chennnai) (Trib)

525 **S. 36(1)(viia) : Bad debt-Provision for bad and doubtful debts-Banks-Schedule bank –Average advances of rural branches-Advances outstanding as well as fresh advances are to be considered.**
Held that while calculating average aggregate advances of rural branches not only fresh advances made during the year, but also the amount of advances outstanding are to be considered. (AY. 2016-17, 2017-18)
Canara Bank v. DCIT (2024) 204 ITD 358 (Bang)(Trib)

526 **S. 36 (1)(viii): Eligible business-Special reserve-Rule of consistency-Methodology consistently adopted-deduction allowed for earlier AYs attaining finality-Deletion of disallowance is affirmed-SLP of Revenue dismissed. [S. 145]**
Held that the same methodology had been adopted consistently with respect to the deletion of disallowance made u/s 36(1)(viii) for the previous eight years and had been

accepted by the Department without any objection. Therefore, the Tribunal did not error in deleting the disallowance made u/s. 36(1)(viii) for the AY 2010-11. SLP of revenue dismissed. (AY. 2010-11)
PCIT v. PNB Housing Finance Ltd [2024] 297 Taxman 229 / 461 ITR 481 (SC)
Editorial : PCIT v. PNB Housing Finance Ltd [2023] 146 taxmann.com 445 / [2024] 461 ITR 476 (Delhi)(HC)

S. 37(1): Business expenditure-Banks-Government Securities-Interest paid for broken period-Allowable as revenue expenditure 527
The High Court held that the interest paid for the broken period should not be considered as part of the purchase price, but should be allowed as revenue expenditure in the year of purchase of the securities u/s 37 of the Act. Dismissing the appeal, the Court held that since the tax effect was neutral, the method of computation adopted by the assessee and accepted by the Revenue could not be interfered with. On the facts of the case, the judgment in Vijaya Bank Ltd. v. Add. CIT(1991) 187 ITR 541 (SC) would have no application. (AY. 1978-79) (AY. 1983-84, 1984-85, 1987-88)
CIT v. Citi Bank N. A. (No. 1) (2024)469 ITR 273 (SC)
Editorial : CIT v. Citi Bank N. A. (2003) 264 ITR 18 (Bom)(HC)
CIT v. Citi Bank N. A. (No. 7) (2024)469 ITR 417 (SC)
Editorial: CIT v. Citi Bank N. A (ITR. No. 265 of 1997 dt. 10-4-2003)

S. 37(1): Business expenditure-Banks-Government Securities-Interest paid for broken period-Allowable as revenue expenditure. [Art. 136] 528
Held that interest paid to the sellers for the broken period on purchase of securities should not be considered as part of purchase price, but should be allowed as revenue expenditure in the year of purchase of securities. Followed *CIT v. CIT Bank N. A (No. 1) (2024) 469 ITR 273 (SC)* (AY. 1982-83) (AY. 1983-84, 1984-85, 1987-88)
CIT v. Citi Bank N. A. (NO. 3) (2024)469 ITR 403 (SC)
Editorial : CIT v. Citi Bank N. A ITR No. 191 of 1997 dt. 10-4-2003(Bom)(HC)
CIT v. Citi Bank N. A. (No. 5) (2024)469 ITR 414 (SC)
Editorial : CIT v. Citi Bank N. A. (ITA. No. 426 of 1998 dt. 10-4-2003
CIT v. Citi Bank N. A. (No. 7) (2024)469 ITR 417 (SC)
Editorial: CIT v. Citi Bank N. A (ITR. No. 265 of 1997 dt. 10-4-2003)

S. 37(1): Business expenditure-Banks-Government Securities-Purchased after interest date-Interest paid for broken period is not part of purchase price-Allowable as revenue expenditure. 529
Held that interest paid for the broken period on purchase of Government securities is allowable as deduction. Followed *CIT v. Citi Bank N. A (No. 1 (2024) 469 ITR 273 (SC)* (AY. 1985-86, 1986-87)
CIT v. Standard Chartered Bank (2024)469 ITR 408 (SC)
Editorial : CIT v. Standard Chartered Bank,ITR No. 87 of 1996 dt 16-7-2003 (Ker)(HC)

530 **S. 37(1): Business expenditure-Bank-Interest-Capital or revenue-Broken period interest paid on purchase of securities-Allowable as revenue expenditure-SLP of Revenue is dismissed. [Art. 136]**

Dismissing the appeal of the Revenue the High Court held that broken period interest paid on purchase of securities is allowable as revenue expenditure. Followed, *CIT v. State Bank of Hyderabad (No. 1) (2024) 469 ITR 316 (Telengana)(HC)*. SLP of Revenue is dismissed. (AY. 1997-98)

CIT v. State Bank of Hyderabad (2024) 469 ITR 332 / (2025) 303 Taxman 165 (SC)

Editorial : CIT v. State Bank of Hyderabad (No. 2) (2024)469 ITR 325 (Telangana)(HC)

531 **S. 37(1): Business expenditure-Capital or revenue-Broken period Interest-Stock in trade-Allowable as revenue expenditure. [S. 28(i)]**

Government securities purchased by banks to meet the statutory liquidity ratio (SLR) requirements are held as stock-in-trade. The securities were treated as stock-in-trade in the hands of the bank, in compliance with RBI guidelines and CBDT circulars. The RBI Circular of 21. 04. 1998 clarified that Banks should not capitalise broken period interest paid to the seller as a part of the cost but treat it as an item of expenditure under the profit and loss account. The Court emphasized that whether a particular security is held as an investment or stock-in-trade is a factual determination within the knowledge of the assessee. If securities are held as investments, the benefit of broken period interest deduction would not apply. However, for securities held as trading assets, the deduction is permissible. Considering that the assessee held the securities as stock-in-trade, the broken period interest is treated as revenue expenditure and is deductible u/s 37(1). Further, Interest income on these securities was taxed as business income u/s 28(i) (AY. 1990-91 to 1992-93)

Bank of Rajasthan Ltd. v. CIT [2024) 301 Taxman 463/ 469 ITR 280/ 341 CTR 65/243 DTR 1 (SC)

Editorial: Decision of the Jaipur Bench of the Rajasthan High Court in CIT v. Bank of Rajasthan Ltd (2008) 218 CTR 417/ 5 DTR 239 / (2019) 316 ITR 391 (Raj)(HC), is reversed. Decision in CIT (LTU) v. State Bank of India (2020) 428 ITR 316 (Karn) (High Court, Bombay, Rajasthan and Telegana High Courts, affirmed.

532 **S. 37(1) : Business expenditure-Capital or revenue-Software development-Allowable as revenue expenditure-SLP of revenue expenditure. [Art. 136]**

Assessee-company is engaged in the business of rendering customized internet advertising services for advertisers which could be used on desktop. In order to develop its software, the assessee had incurred certain expenditure. AO treated said expenditure as capital in nature. Tribunal held allowable as revenue expenditure. High Court held that since product developed by assessee had become obsolete due to rapid change in technology and assessee had abandoned further development of the same, expenditure incurred by assessee was to be treated as revenue in nature. SLP of Revenue is dismissed. (AY. 2015-16, 2016-17)

PCIT v. Adadyn Technologies (P.) Ltd. (2024) 300 Taxman 112 (SC)

Editorial : PCIT v. Adadyn Technologies (P.) Ltd. (2024) 162 taxmann.com 666 (Karn) (HC)

S. 37(1) : Business expenditure-Compensation-Subsidiaries-Captive use-Delay of 526 days-SLP of revenue dismissed. [Art. 136] 533

Assessee owned two mines which were used by its subsidiaries for captive use. However, ores available in said mines were not suitable for production and were sold in open market. Later, subsidiaries purchased ores of desired grade from outside parties which resulted in substantial financial loss. Assessee paid compensation to its subsidiaries for financial loss incurred and claimed the same as expenditure. AO denied said claim on ground that it was not incurred wholly and exclusively for the purpose of business of assessee. High Court held that it could not be said that there was no intimate connection between assessee and two subsidiaries as far as business activities were concerned and since compensation paid by assessee was to recoup business losses of subsidiaries which was irrecoverable as far as assessee was concerned, expenditure claimed by assessee was to be allowed. On SLP filed by revenue, it was found that there was a gross delay of 526 days in filing SLP and explanation offered for condonation of delay was not satisfactory. SLP of revenue dismissed. (AY. 2006-07 to 2009-10)

PCIT v. Industrial Development Corporation of Orissa Ltd. (2024) 300 Taxman 603/ 469 ITR 395 (SC)

Editorial : PCIT v. Industrial Development Corporation of Orissa Ltd(2023) 147 taxmann.com 298 / (2023) 22 ITR-OL 167 (Orissa)(HC), 2022 SCC Online. Orissa 3940

S. 37(1) : Business expenditure-Capital or revenue-Corporate Social Responsibility (CSR)-Amendment is not retrospective-Explanation 2 was inserted by the Finance Act, 2014 with effect from April 1, 2015 to S. 37(1) of the Act and is prospective-SLP of revenue dismissed. [Art. 136] 534

Dismissing the appeal of the Revenue, the High Court held that the assessee had provided funds in discharge of its obligation as mandated by law on the advice of the Department of Public Enterprises and therefore, it could not be said that the obligation placed on the assessee by law was not connected wholly and exclusively to its business. There is nothing on record which would show that the assessee had directed investment of funds which were offered in fulfilment of discharge of its legal obligation in a capital asset. The Tribunal had concluded that the corporate social responsibility expenses incurred by the assessee were allowable u/s 37. Explanation 2 appended to S. 37(1) was not retrospective in nature. Followed, *PCIT v. PEC LTD. (2023) 451 ITR 436 (Delhi)(HC)*. SLP of revenue dismissed.

PCIT v. Steel Authority of India Ltd. (2024) 300 Taxman 593 (SC)

Editorial : PCIT v. Steel Authority of India Ltd. (2023) 148 taxmann.com 132/ 455 ITR 139 (Delhi)(HC)

S. 37(1): Business expenditure-Provision for contingent liabilities-High Court affirmed the order of Tribunal-SLP of revenue dismissed for failure to condone delay of 289 days. [Art. 136] 535

High Court dismissing the appeal of the Revenue on the ground that the Tribunal was right in deleting the disallowance made by the assessing authority in respect of future expenses claimed as deduction u/s 37 holding that the provision claimed by the assessee was an allowable deduction. SLP of revenue dismissed for failure to condone delay of 289 days. (AY. 2014-15)

PCIT v. Century Real Estate Holdings Pvt. Ltd. (2024)467 ITR 16 / 301 Taxman 235 (SC)

Editorial : PCIT v. Century Real Estate Holdings Pvt. Ltd. (2024)467 ITR 13 /167 taxmann.com 220 (Karn)(HC)

536 **S. 37(1): Business expenditure-Bogus expenses-Construction business-Payments made to Sub-contractors-TDS is deducted-Order of Tribunal confirming the disallowance is affirmed-No substantial question of law-SLP of assessee rejected. [Art. 136]**

Court held that expenses were not connected to the work undertaken by the assessee and were bogus expenses. As regards the additional ground that was raised, by a reasoned order, the ITAT had considered it to a certain extent which covered the partly allowed claim by the CIT (Appeals) and taking into consideration the tax deducted at source deposited by the assessee. A reasoned order had been passed disallowing the claim of the assessee. No substantial question of law. SLP of assessee rejected. (AY. 2010-11)

Ramesh Harbibhau Gawli v. ITO (2024) 467 ITR 161 / 301 Taxman 407 (SC)

Editorial : Ramesh Harbibhau Gawli v. ITO (2024) 467 ITR 9 /167 taxmann.com 323 (Bom)(HC)

537 **S. 37(1): Business expenditure-Capital or revenue-Software Development expenses-Product abandoned on becoming obsolete due to development in technology-No enduring benefit-Allowable as revenue expenditure-SLP of revenue dismissed. [Art. 136]**

Dismissing the appeals of the Revenue, the High Court held that the assessee's investment to develop a software platform for desktops had become obsolete due to rapid change in the technology and the assessee had abandoned further development as a result of which it had abandoned the product and incurred a loss. The project having been abandoned, the assessee would not get any enduring benefit. The ITAT, on a correct analysis of the facts, had held that the expenditure was revenue and not capital in nature. SLP of revenue dismissed. (AY. 2015-16, 2016-17)

PCIT v. Adadyn Technologies Pvt. Ltd. (2024)465 ITR 409/162 taxmann.com 667 (SC)

Editorial : PCIT v. Adadyn Technologies Pvt. Ltd. (2024)465 ITR 353 /162 taxmann.com 666 (Karn)(HC)

538 **S. 37(1) : Business expenditure-Expansion of existing business-Revenue expenditure-Tax effect is below threshold limits-SLP of revenue dismissed. [S. 268A, Art. 136]**

High Court held that expenditure in connection with expansion of existing business would be allowed as revenue expenditure. Court held that since tax effect was below threshold limits, Special Leave Petition dismissed. (AY. 1998-99)

CIT v. Nirma Ltd. (2024) 299 Taxman 180 (SC)

Editorial : CIT v. Nirma Ltd (2015) 229 Taxman 535 (Guj)(HC)

539 **S. 37(1) : Business expenditure-Software development solution and management-Capital or revenue-Software abandoned-Work in progress-SLP of revenue dismissed. [Art. 136]**

Assessee is engaged in business of software development solution and management. It incurred expenditure in connection with development of a new software product and treated expenditure as a part of capital work-in-progress for AYs 2004-05 to 2007-08. However, new product never came into existence and development of this software was abandoned and assessee then claimed whole capital work in progress as revenue

expenditure in AYs 2006-07 and 2007-08. AO held that expenditure incurred was capital in nature and disallowed same. High Court held that since no new asset came into existence which would be of an enduring benefit to assessee, expenditure could only be said to be revenue in nature. SLP of revenue dismissed. (AY. 2006-07, 2007-08)
PCIT v. Trigent Software Ltd. (2024) 299 Taxman 453 / 464 ITR 770 (SC)
Editorial : PCIT v. Trigent Software Ltd(2023) 147 taxmann.com 52/ 457 ITR 765 (Bom)(HC)

S. 37(1) : Business expenditure-Capital or revenue-Purchase of software-Not necessary that income must be earned because of such expenditure-SLP of revenue dismissed. [S. 28(i), Art. 136] 540
Assessee claimed expenditure incurred for purchase of software as revenue expenditure. AO held that assessee had not started any effort to earn income and it was just in process of making a brand for future utilization and when there was no income chargeable u/s 28, no expenses under sections 30 to 37 could be claimed in this regard and noted that assessee had not earned any revenue from its business and treated expenditure as capital expenditure. Tribunal relying upon its order passed in assessee's own case for previous AY reversed view taken by AO and allowed claim. High Court held that proposition put forth by AO that when there was no income chargeable u/s 28, no expenses could be claimed by an assessee under sections 30 to 37 was completely unsustainable and since issue that revenue sought to raise before Court was very same issue which Tribunal grappled with in previous AY, no substantial question of law arose for consideration. SLP filed by revenue dismissed. (AY. 2013-14, 2014-15)
PCIT v. Hike (P.) Ltd. (2024) 299 Taxman 178 / 299 Taxman 447/ 464 ITR 394 (SC)
Editorial : PCIT v. Hike (P.) Ltd. (2024) 158 taxmann.com 162/ 462 ITR 183 (Delhi) (HC)

S. 37(1) : Business expenditure-Diversion by overriding title-Sharing of profit-The AO has to take into account the manner in which the business works, the modalities and manner in which SAP/additional purchase price/final price are decided and determine what amount forms part of the profit-Whatever is the profit component is sharing of profit/distribution of profit and the rest is deductible as expenditure –question of law is answered partly in favour of the revenue and partly in favour of the assessee-Matter is remitted to the AO to undertake the exercise as stated in the judgement after giving an opportunity to the respective assesses-Review petition is dismissed. [S. 40A(2), Sugarcane (Control) Order 1966 clauses, 3, 5A] 541
AO held that the difference between the price paid as per Clause 3 of the Control Order, 1966, determined by the Central Government, and the price determined by the State Government under Clause 5A of the Control Order, 1966 (and consequently paid by the assessee to the cane growers) can be said to be a distribution of profit, as in the price determination under Clause 5A of the Control Order, 1966, there is an element of profit and therefore the price paid to the cane growers determined by the State Government is excessive and therefore it is not deductible as expenditure, and is required to be included in the income of the assessee. AO also held that cane price paid to the cane growers over the SMP is disallowable as per S. 40A(2)(a) of the Act by observing that purchase price paid is excessive and unreasonable. On appeal CIT(A) allowed the appeal

following SB in *Dy. CIT v. Manjara Shetkari Sakhar Karkhana Ltd (2004) 91 ITD 361 (SB) (Mum) (Trib)(dt. 19.08.2004)*. Order of CIT(A) was affirmed by Tribunal. High Court dismissed the appeal of the revenue following the decision in *CIT v. Manjara Shetkari Sahakari Sakar Karkhana Ltd (2008) 301 ITR 191 (Bom) (HC)*. On appeal by the revenue the Supreme Court considering the decision in *Maharashtra Rajya Sahkari Sakkar Karkhana Sangh Ltd v. State of Maharashtra (1995) Supp. (3) SCC 475* held that the AO has to take into account the manner in which the business works, the modalities and manner in which SAP/additional purchase price/final price are decided and determine what amount forms part of the profit. Whatever is the profit component is sharing of profit/distribution of profit and the rest is deductible as expenditure. Question of law is answered partly in favour of the revenue and partly in favour of the assessee. Matter is remitted to the AO to undertake the exercise as stated in the judgement after giving an opportunity to the respective assesses. Review petition is dismissed. (AY. 1998-99)
Sharad Sahakari Sakhar Karkhana Ltd. v. CIT (2024) 298 Taxman 191/339 CTR 345 (SC)
Editorial : CIT v. Tasgaon Taluka S. S. K Ltd (2019) 262 Taxman 176 / 412 ITR 420 / 307 CTR 473/ 175 DTR 345 (SC)

542 **S. 37(1): Business expenditure – Compensation-340 days delay-SLP of revenue dismissed. [Art. 136]**
Assessee owned two mines which were used by its subsidiaries for captive use. However, ores available in said mines were not suitable for production and were sold in open market. Later, subsidiaries purchased ores of desired grade from outside parties which resulted in substantial financial loss. Assessee paid compensation to its subsidiaries for financial loss incurred and claimed same as expenditure. AO denied said claim on ground that it was not incurred wholly and exclusively for purpose of business of assessee. High Court held that it could not be said that there was no intimate connection between assessee and two subsidiaries as far as business activities were concerned and since compensation paid by assessee was to recoup business losses of subsidiaries which was irrecoverable as far as assessee was concerned, expenditure claimed by assessee was to be allowed. On SLP filed by revenue, it was found that there was a gross delay of 340 days in filing SLP and explanation offered for condonation of delay was not satisfactory. SLP of revenue dismissed. (AY. 2006-07 to 2009-10)
PCIT v. Industrial Development Corporation of Orissa Ltd. (2024) 298 Taxman 743 (SC)
Editorial: PCIT v. Industrial Development Corporation of Orissa Ltd (2023) 147 taxmann.com 298 (Orissa)(HC)

543 **S. 37(1): Business expenditure-Corporate Social Responsibility-SLP dismissed on facts-Leaving question of law open. [Art. 136]**
High Court held that the Tribunal had not erred in allowing the deduction claimed by the assessees u/s 37 of the Income-tax Act, 1961, of the expenses incurred for the assessee's corporate social responsibility endeavours. On a petition for special leave to appeal to the Supreme Court.
The Supreme Court dismissed the petition in the peculiar facts of the case, leaving the question of law open. (AY. 2013-14, 2014-15)
PCIT v. Rites Ltd. (2024)460 ITR 593/297 Taxman 5 (SC)

Editorial: Refer, PCIT v. PEC Ltd (2023) 451 ITR 436 /221 DTR 481/ 330 CTR 593/ 291 Taxman 281 (Delhi)(HC) / PCIT v. Rites Ltd. (2023) 451 ITR 436 / 221 DTR 481/ 330 CTR 593 (Delhi)(HC)

S. 37(1) : Business expenditure-Loss on account of fluctuation in rate of foreign exchange-Derivative contracts-Hedge against exchange risk in respect of export proceeds receivable in foreign exchange-Loss is allowable-Special leave petition dismissed. [S. 28(i) Art. 136] 544

Held that the forward contracts entered into by the assessee were not by way of trading per se in foreign exchange derivatives but derivative contracts to hedge its exchange risk in respect of export proceeds receivable by it in foreign exchange, and consequently, the Central Board of Direct Taxes Circular No. 3 of 2010 dated March 23, 2010 had no application. On a petition for special leave to appeal to the Supreme Court dismissed (AY. 2012-13)

PCIT v. Emmsons International Ltd. (2024)460 ITR 718/ 297 Taxman 4 (SC)

Editorial : PCIT v. Emmsons International Ltd. (2024)460 ITR 715 /158 taxmann.com 10 (Delhi)(HC)

S. 37(1) : Business expenditure-Capital or revenue-Licence-Capital asset-Amortisation of expenditure-Licence to operate telecommunication services-One-time entry fee and licence fee based on percentage of annual gross revenue earned-Both payments capital in nature and to be amortised-Intangible asset capital in nature-Review petition is dismissed. [S. 35ABB, The Telegraph Act, 1885, S, 4(1), 8, 20, 20A and 21] 545

Assessee is engaged in business of telecommunication services, procured licenses in different telecom circles initially under 1994 agreement which was subsequently governed by New Telecom Policy, 1999. In terms of licence agreement, assessee had to pay entry fee payable up to 31-7-1999 and, thereupon, licence fee was payable as a percentage of gross revenue under licence effective from 1-8-1999. Assessee claimed license fee paid on revenue sharing basis as revenue expenditure. AO held that licence fee paid ought to be treated as capital expenditure and amortised over remainder of twelve years licence period. Held that licence granted under Policy of 1999 was non-transferable and non-assignable and if there was a default in payment of licence fee, entire licence could be revoked after sixty days' notice. Supreme Court by impugned order held that since license fees paid to Department of Telecommunications (DoT) under New Telecom Policy, 1999 was non-transferable and non-assignable and furthermore said payment was intrinsic to existence of licence as well as trade itself, entry fee as well as variable annual licence fee paid would be capital in nature and was to be amortised in accordance with S. 35ABB. Assessee filed a review petition seeking reconsideration of impugned order. Held that there was no error apparent on face of record or any merit in review petition, warranting reconsideration of impugned order. Review petition was dismissed. (AY. 1999-2000 to 2007-08)

Bharti Hexacom Ltd. v. CIT (2024) 297 Taxman 368/337 CTR 254 (SC)

Editorial : Review petition dismissed, CIT v. Bharti Hexacom Ltd(2023) 155 taxmann.com 322/ 458 ITR 593 /335 CTR 1 (SC)

546 **S. 37(1) : Business expenditure-Corporate social responsibility-Expenses towards contribution/donation to educational institutions, trust, local bodies for discharging its corporate social responsibility-Order of High Court is affirmed-SLP is granted to the Revenue. [Art. 136]**

High Court held that as long as expenses are incurred wholly and exclusively for purpose of earning income from business or profession, merely because some of these expenses are incurred voluntarily, i. e. without there being any legal or contractual obligation to incur same, those expenses do not cease to be deductible in nature-Further, concept of business is not static and it has evolved over a period of time to include within its fold concrete expression of care and concern for society at large and people of locality in which business is located in particular-Thus, where assessee-company, a State Government undertaking, engaged in business of manufacturing, sale and trading of chemical fertilizers and chemical industrial products, incurred expenses towards contribution/donation to educational institutions, trust, local bodies for discharging its corporate social responsibility, impugned expenses were to be allowed as deduction. SLP is granted to the Revenue. (AY. 2010-11)

PCIT v. Gujarat Narmada Valley Fertilizers & Chemicals Ltd. (2024) 297 Taxman 400 (SC)

Editorial: PCIT v. Gujarat Narmada Valley Fertilizers & Chemicals Ltd (2020) 121 taxmann.com 82/ 422 ITR 164 (Guj)(HC)

547 **S. 37(1) : Business expenditure-Interest-Directed to file paper book-Failure to file the paper book within specified time of 15 days, High Court dismissed the appeal-On SLP delay in filing of paper book is condoned-Directed the High Court to decide the appeal on merits along with other connected appeals. [S. 260A, Art. 136]**

Assessee filed an appeal before High Court against order passed by Tribunal upholding disallowance of interest. High Court directed assessee to file paper books within a specified time period. Since assessee failed to file paper books within specified time, High Court dismissed appeal and application for restoration of appeal was also dismissed by High Court. Meanwhile, in other connected appeal which arose from similar proceedings but related to different AY, High Court by its order dismissed said appeal on ground that assessee's Appeal No. 817 as well review was dismissed. On SLP the Court held that since High Court had not considered issue on merits, High Court ought to have condoned delay in filing paper books in appeal and should have heard appeal on merits and consequently, delay in filing paper book in said appeal was to be condoned and said appeal was to be restored along with connected appeal. Matter remanded. (AY. 2001-02)

Herbicides India Ltd. v. ACIT (2024) 297 Taxman 389 /338 CTR 755 (SC)

Editorial : Herbicides India Ltd. v. ACIT (Raj)(HC) (DBMRA 303-2014 dt. 25-2-2015, DBCR 25-2015, DBMRA dt. 26-4-2017)

548 **S. 37(1) : Business expenditure-Interest on securities-Securities held as stock in trade-Order of High Court is affirmed-SLP of revenue dismissed. [S. 28(i), Art. 136]**

Assessee, a banking company, claimed deduction for broken period interest paid on securities purchased during previous year. AO disallowed same by treating same as capital in nature. High Court held that the assessee had been holding securities as stock-

in-trade hence interest paid on such securities would be an allowable deduction. SLP filed by revenue dismissed. (AY. 1998-99)
CIT v. State Bank of India (2024) 297 Taxman 6/ 463 ITR 701 (SC)
Editorial: CIT v. State Bank of India(2023) 292 Taxman 38/ 445 ITR 122 (Telangana) (HC)

S. 37(1): Business expenditure-Provision for pit filling expenses-Tribunal remanding the matter to the AO-No substantial question of law. [S. 260A] 549
Dismissing the appeal of the Revenue the Court held that the Revenue had not alleged or pleaded that the finding recorded by the Tribunal was perverse. The order of the Tribunal remanding the matter to the AO for reconsideration of the deduction of provision for pit filling expenses u/s 37, after granting an opportunity of hearing to the assessee was without expressing any opinion on the merits. The order of remand would not prejudice the interests of the Revenue or the assessee. (AY. 2014-15)
PCIT v. Gogte Minerals (2024) 471 ITR 410 (Karn) (HC)

S. 37(1): Business expenditure-Capital or revenue-Expenditure on capital stores and spares-replacement of spares of machinery-Allowable as revenue expenditure-Expenses incurred on software for facilitating trading operation is revenue expenditure. [S. 32, 260A] 550
Dismissing the appeal of the Revenue the Court held expenditure incurred on capital stores and spares and the expenditure on account of replacement of spares of machinery as revenue expenditure. Court also held that Tribunal was justified in deleting the addition of net of depreciation being expenses incurred on software as revenue expenditure. (AY. 2005-06)
PCIT v. Gujarat Industries Power Co. Ltd. (2024) 471 ITR 525 (Guj) (HC)

S. 37(1): Business expenditure-Provision for warranty-Under contract of sale-Liquidated damages-Allowable as expenditure-Leave travel allowance as per rule and consistency practice-Allowable deduction-Provision of 43B(f) is not applicable. [S. 10(15), 43B(f), 260A] 551
Dismissing the appeal of the Revenue, the Court held that the Tribunal is justified in allowing the provision for warranty and liquidated damages as allowable expenditure. Leave travel allowance as per rule and consistency practice allowable deduction. Provision of 43B(f) is not applicable. (AY, 2007-08, 2011-12, 2012-13)
PCIT v. Heavy Engineering Corporation Ltd. (2024) 471 ITR 481 (Jharkhand) (HC)

S. 37(1): Business expenditure-Iron ore mining was illegal-Transport charges-allowable as revenue expenditure-Allegation that part of expenditure utilised by director-No disallowance can be made in the assessment of company-No substantial question of law. [S. 37(1), Explanation, 260A] 552
Dismissing the appeal of the Revenue the Court held that even if the allegation of the AO were accepted that the assessee was doing some illegal mining and the production of the assessee to the extent of 40%. of production was out of illegal mining, the expenses incurred for such production did not attract the disallowance under Explanation 1 to S. 37(1) of the Act because the expenses incurred for mining could not be considered as for an offence or prohibited by law in itself. It was not the case of the AO that any

deduction had been claimed by the assessee for facilitating the carrying out of illegal mining or for any penalty in respect of such illegal mining. The assessee had produced evidence to show that the expenditure claimed had been for purposes of transportation. The oral statements of the transporters recorded behind the assessee's back could not be used in evidence in the present proceedings. That was opposed to principles of natural justice contrary to law and therefore vitiated. Court also held that if a director of the company had been benefited by the expenses in respect of repairs and maintenance and depreciation on helicopter, the AO of the director was at liberty to make additions as per law in the hands of such director. No disallowance could be made in the hands of the assessee-company. (AY. 2010-11)
PCIT v. Obulapuram Mining Company Pvt. Ltd. (2024) 471 ITR 1 (Karn) (HC)

553 **S. 37(1): Business expenditure-Capital or revenue-Construction of school and temples situated in the villages surrounding the mining area-business exigencies-Allowable as revenue expenditure-No substantial question of law. [S. 260A]**
Dismissing the appeal of the Revenue the Court held that village areas, the assessee needed to maintain healthy relations and create cordial relations with the villagers residing in the surrounding locality of the mining and business area, so that smooth business and mining activity could be undertaken. Order of Tribunal is affirmed. No substantial question of law (AY. 2010-11)
ACIT v. Sociedade De Fomento Industrial Pvt. Ltd. (2024) 471 ITR 273 (Bom) (HC)

554 **S. 37(1): Business expenditure-Capital or revenue-Renovation of hotel-Repairs--Expenditure on pressurisation of lift silafts-fees paid to interior decorator-Allowable as revenue expenditure-Additional ground-Matter remanded to the AO-Entries in the books of account cannot be the basis for determining whether the expenditure are capital or revenue. [S. 30(a)(ii)), 145]**
Allowing the appeal the Court held that expenditure incurred on renovation of hotel repairs, expenditure on pressurisation of lift silafts-fees paid to interior decorator are allowable as revenue expenditure. As regards additional ground the matter is remanded to the AO. Court also held that entries in the books of account cannot be the basis for determining whether the expenditure are capital or revenue. (AY. 1991-92 to 1997-98)
Asian Hotels Ltd. v. CIT (2024) 470 ITR 1 (Delhi)(HC)

555 **S. 37(1): Business expenditure-Solid waste disposal-Not contingent-Allowable as deduction. [S. 145, 260A]**
Held that expenditure incurred in the past and as per the future activities as against the receipt of income of corresponding obligation and liability. The Tribunal was justified in allowing the expenditure. No question of law. (AY. 2015-16)
PCIT v. Green Environment Services Co-Operative Services Ltd. (2024)470 ITR 249 (Guj) (HC)

556 **S. 37(1): Business expenditure-Expenses incurred on repairs and maintenance of stores-Allowable as revenue expenditure-Donation to Trust-Sardar-Allowable as deduction-Amount written off of new project, the question of law is admitted. [S. 80G, 260A]**
Held that the Tribunal is justified in deleting addition on account of disallowance of expenses on repairs and maintenance of stores and spares and contribution/ donation

to trust, is allowable as revenue expenditure. However the amount written off of new project, the question of law is admitted. (AY. 2011-12)
PCIT v. Gujarat State Fertilizers And Chemicals Ltd. (2024)470 ITR 363 (Guj) (HC)

S. 37(1): Business expenditure-Bank-Interest-Capital or revenue-Broken period interest paid on purchase of securities-Allowable as revenue expenditure. [S. 260A] 557
Dismissing the appeal of the Revenue the Court held that broken period interest paid on purchase of securities is allowable as revenue expenditure. Followed, *CIT v. State Bank of Hyderabad (No. 1) (2024) 469 ITR 316 (Telengana)(HC)*. (AY. 1997-98)
CIT v. State Bank of Hyderabad (No. 2) (2024)469 ITR 325 (Telangana)(HC)
Editorial : SLP of revenue dismissed, CIT v. State Bank of Hyderabad (2024) 469 ITR 332 (SC)

S. 37(1): Business expenditure-Community development expenditure-Street lights on the road, ambulance for meeting medical emergencies, developing public garden-The concept of business is not static and over a period of time, it would include within its fold the care and concern for the society at large which would result in a good will being created in its favour leading to better business-Allowable as business expenditure. 558
The Respondent assessee had claimed deduction under the head community development expenditure for providing street lights on the road, ambulance for meeting medical emergencies, developing public garden for residence of the village where the factory is situated. The AO disallowed the expenditure on the ground that the same are not incurred wholly and exclusively for the purpose of Respondents' business. The CIT(A) up held the order the AO. On appeal Tribunal following the decision in *CIT v. Madras Refineries Ltd (2004) 266 ITR 70 (Mad)(HC)* allowed the appeal on the ground that the concept of business is not static and over a period of time, it would include within its fold the care and concern for the society at large which would result in a good will being created in its favour leading to better business. Accordingly the expenditure is allowed as allowable business expenditure. On appeal by the Revenue the High Court affirmed the order of the Tribunal. (ITA No. 1686 of 2013 dt. 10-7 2015) (AY. 1996-97)
CIT v. Nicholas Piramil (India)(Ltd.) (Bom)(HC) www.itatonline.org

S. 37(1): Business expenditure-Division of expenditure-Sales return-Provision for sales return-No substantial question of law. [S. 10(1), 145, 260A] 559
Held that view of the Tribunal is a reasonable one and could not be termed perverse. This was especially in view of the seasonal nature of the business carried out by the assessee and the short shelf life of the seeds. The Tribunal held that it was imperative for the assessee to take into account the quantity of unsold seeds at the end of the year and the need to revalidate their further utility and to take them into stock for the next season. Therefore, it could not be said that the provision for sales return was unascertained or unreasonable. There was no error or infirmity in the view taken by the Tribunal. No substantial question of law. (AY. 2013-14)
PCIT v. Prabhat Agri Biotech Ltd. (2024)469 ITR 552 (Telangana)(HC)

560 **S. 37(1): Business expenditure-Capital or revenue-Advertisement expenses-Payments made under voluntary retirement scheme-Advance paid to project later shelved-Allowable as revenue expenditure-Allowance of workmen and staff welfare fund-Matter remanded by the Tribunal-No question of law. [S. 36(1), 40A(9), 260A]**
Dismissing the appeal of the Revenue the Court held that, advertisement expenses, payments made under voluntary retirement scheme, advance paid to project later shelved, allowable as revenue expenditure. Allowance of workmen and staff welfare fund Matter remanded by the Tribunal. Followed *PCIT v. Tata Chemicals L td. (No. 1) (2024)469 ITR 250 (Bom)(HC)*. Order of Tribunal is affirmed. (AY. 2000-01)
PCIT v. Tata Chemicals Ltd. (No. 2) (2024)469 ITR 256 (Bom)(HC)

561 **S. 37(1) : Business expenditure-Expenses for inviting NRIs to open deposits in its Indian branches-Allowable as business expenditure. [S. 260A]**
Assessee, a foreign bank, incurred expenses for inviting NRIs to open deposits in its Indian branches. Such expenses were incurred in accordance with a Reserve Bank of India circular dated 16-10-1991. Tribunal held that since said expenditure was incurred solely for purpose of business of assessee in India, same is to be allowed. Order of Tribunal is affirmed by High Court. (AY. 1992-93, 1994-95, 1995-96)
DIT v. ANZ Grindlays Bank (2024) 301 Taxman 599 (Delhi)(HC)

562 **S. 37(1) : Business expenditure-CIT (Appeals) directed to decide the issue on disallowance of deduction claimed on debenture resumption within 3 months as matter pertains to year 1997-98-Revenue has accepted the finding of Tribunal in assessee's own case in previous years regarding disallowance of expenses on entertainment expenditure and expenses related to school the same question of law cannot be raised in a subsequent year. [S. 40A (9), S. 246A, 260A].**
The Hon'ble Bombay High Court in an appeal filed by the Revenue had to decide on questions of law arising out of the order passed by the Tribunal, relating to disallowance of certain expenses. The Hon'ble Court as regards the first question held that the question was covered by the decision of Supreme Court in *T. R. F. Ltd. v. CIT [2010] 323 ITR 397 (SC)*. The second question became a non-issue and as regards the third question, as the matter had been remanded to the CIT(A) for admission of additional ground, the Hon'ble Court directed the CIT(A) to decide the same on merits within 3 months. As regards question nos. 4, 5 and 6, the Hon'ble Court observed that the same had attained finality as the Revenue had not contested the findings of Tribunal in assessee's own case in previous years on the same question of law. Accordingly, the appeal was dismissed. (AY. 1997-98)
PCIT v. Tata Chemical Ltd (No. 1) [2024] 469 ITR 250 / 162 taxmann.com 11 (Bom)(HC)

563 **S. 37(1) : Business expenditure-Foreign Exchange losses towards loan in nature of external commercial borrowings for acquisition of assets from outside India and from within India-The Tribunal failed to look at substance of expenditure and erroneously interpreted the provisions of S. 43A-Matter remanded back to the Tribunal for an effective adjudication of specific issue. [S. 43A, 254(1), 260A]**
The assessee Company had availed foreign currency loan in the nature of external commercial borrowings towards capital expenditure. As per Accounting Standard (AS) 11, the assessee claimed foreign exchange losses owing to change in exchange

rate between the Indian Rupee and foreign currency. The assessee broke up such loss amounts in proportion of the value of capital goods imported into India and value of capital goods acquired within India. The proportionate amount of loss on the value of capital goods imported into India was capitalized as the cost of assets, while the proportionate amount of loss on the value of capital goods acquired within India claimed as revenue expenditure u/s 37(1) of the Act. The AO, while applying the amended provisions of S. 43A, disallowed the entire loss treating it as capital. The CIT (Appeals) upheld the order of the AO with the extended view that foreign currency loss would be treated as revenue expenditure only if foreign exchange loan utilized for trading activity. On further appeal, the Tribunal held that S. 43A could have no relevance and deleted the disallowance made by the AO and confirm the order of CIT (Appeals). On further appeal, the Hon'ble Court observed that it was important for the Tribunal to examine whether, on its own merit, such expenditure would qualify as revenue expenditure for purposes of S. 37(1) and towards that end, whether it can be stated conclusively that such expenditure cannot be regarded as capital expenditure and since such analysis is missing, the order of the Tribunal is set aside and remanded back to the Tribunal for an effective adjudication. (AY. 2009-10)

PCIT v. Galaxy Surfactants Ltd. (2024) 301 Taxman 173 / 341 CTR 919 / 244 DTR 209 / 469 ITR 181 (Bom)(HC)

S. 37(1): Business expenditure-Banking business – Capital or revenue-Stock in trade-Broken period interest paid on the purchase of securities is revenue expenditure since securities constitute stock-in-trade. [S. 145, 260A] 564

In an appeal preferred by the Revenue against an order of the Tribunal, the Hon'ble Telangana High Court had to decide whether the broken period interest which is paid on purchase of securities is revenue expenditure, more so when such securities constitute the stock-in-trade of the assessee. The Hon'ble Court observed that the assessee had been holding its securities all along as stock-in-trade which is not in dispute. For successive AYs, the Revenue has accepted the fact that the assessee had been holding the securities as stock-in-trade. In this backdrop, the Hon'ble Court placed further reliance on Circular No. 665 dated October 5, 1993 ([1993] 204 ITR (St.) 39) which clarified that where the banks are holding securities as stock-in-trade and not as investments, principles of law enunciated in *Vijaya Bank Ltd. v. Addl. CIT* would not be applicable. Therefore, the CBDT has clarified that the AO should determine on the facts and circumstances of each case as to whether any particular security constitutes stock-in-trade or investment considering the guidelines issued by the Reserve Bank of India from time to time. In light of this, the Hon'ble Court found no infirmity with decision of the Tribunal and accordingly, the appeals were dismissed. (AY. 1996-97)

CIT v. State of Hyderabad (No. 1) [2024] 469 ITR 316 (Telangana)(HC)

S. 37(1): Business expenditure-Compensation-Breach of contract-Real estate and land development-Agreement entered into by managing partner in his individual capacity-Terms and Conditions of the agreement relevant-Arbitral Award-Not allowable as business expenditure. [S. 145, 260A, Indian Partnership Act, 1932, S. 14] 565

The assessee firm was engaged in the business of real estate and land development. One of the partners, Dayanand Pai entered into an agreement with MIPL in his individual

capacity wherein he has agreed to transfer his part of the interest in the built up area of four properties which were proposed to be developed by various builders under JDA and as per the terms of the agreement, Dayanand Pai shall be responsible for all the losses and consequential damages. As per another agreement, Dayanand Pai undertook to deliver the built up area within a certain time frame, but did not hand it over. The arbitration proceedings were initiated. Based on the arbitration award, the assessee shall refund a sum of Rs. 22 Crores and Rs. 64 Crores as compensation and accordingly, the assessee claimed a sum of Rs. 64.75 Crores as compensation paid in its return of income. However, the AO disallowed the claim on the ground that on the date of agreement with MIPL, the assessee was not the owner of the properties. The CIT (Appeals) confirmed the order of the AO. However, on further appeal by the assessee, the Tribunal allowed the claim of the assessee u/s 37(1) of the Act. On further appeal by the Revenue, the Hon'ble Court observed that as per the provisions of S. 14 of the Indian Partnership Act, 1932, subject to contract between the partners, the property of the firm includes all properties originally brought into the stock of the firm or acquired for the firm in the course of business, that the claim for deduction of compensation was for the Asstt. Year: 2005–06, whereas the date of appointment as the arbitrator was 27-06-2005, the compromise petition was filed on 05-08-2005 and the arbitral award was passed on 30-08-2005 and accordingly held that there is no material to prove that the liability was crystalized or provided during the relevant AY and there is no mention in the agreement that the said Dayanand Pai was acting as the partner of the firm or that the properties which were the subject matter of the agreement were the properties of the firm. Held the reasoning adopted by the Tribunal is clearly erroneous and contrary to law and hence, the substantial questions of the law are answered in favour of the Revenue and against the assessee. (AY. 2005-06)

PCIT v. Canara Housing Development Company (2024) 301 Taxman 377 (Karn)(HC)

Editorial : Canara Housing Development Company v. JCIT (2017) 165 ITD 76 (Bang) (Trib) is reversed.

566 **S. 37(1) : Business expenditure-Capital or revenue-Professional and consultancy charges-Enduring nature, expenditure is capital in nature-Order of Tribunal is affirmed. [S. 260A]**

Assessee-company incurred certain expenditure in relation to professional and consultancy charges and claimed deduction of the same as revenue expenditure. AO treated expenditure as capital expenditure and disallowed same. Tribunal affirmed the order of the AO. On appeal the Tribunal held that since nature of services that were provided by consultant showed that expenses were incurred in connection with obtaining benefits that were of an enduring nature, expenditure is capital in nature. (AY. 2008-09)

Inditrade Capital Ltd. v. CIT (2024) 301 Taxman 638 (Ker.)(HC)

567 **S. 37(1) : Business expenditure –Capital or revenue-Pre operative expenditure-purchase and erection of plant and machinery-Allowable as revenue expenditure –Allowed earlier years and latter years-Rule of consistency is followed. [S. 145, 260A]**

Assessee increased cement manufacturing capacity at its Bilaspur plant, involving purchase and erection of plant and machinery in previous year relevant to AY 1984-85. It filed income-tax returns claiming deductions for pre-operative expenses (power, fuel,

and lease rent for machinery) for AY 1986-87. AO disallowed pre-operative expenses. CIT (Appeals) partly allowed appeal, accepting assessee's contention that pre-operative expenses for expansion should be allowed as revenue expenditure. On appeal, Tribunal reversed the order, treating expenses as capital expenditure. On appeal the Court held that from records that in earlier years (AY 1984-85 and AY 1985-86), Tribunal had treated similar expenses as revenue expenditure and the High Court upheld that treatment. Further, for subsequent years (AY 1990-91, AY 1994-95, and AY 1997-98), High Court consistently maintained that position. Accordingly the Tribunal was not justified in reaching a conclusion contrary to view expressed by it in its order for AYs 1984-85 and 1985-86 without there being any change in factual or legal situation and without giving any reasons for taking a different view. Followed *CIT v. Raymond Ltd. [2012] 23 taxmann.com 427/208 Taxman 454 (Bom)(HC), CIT v. Raymond Ltd. [2012] 21 taxmann.com 60/209 Taxman 65 (Bom)(HC), Dy. CIT v. Raymond Woollen Mills Ltd. [IT Appeal No. 4088 (Bom.) of 1991],* (AY. 1986-87)
Raymond Ltd. v. CIT (2024) 300 Taxman 323 (Bom.)(HC)

S. 37(1) : Business expenditure-Civil contractor-Widening and strengthening of existing road-Purchase of marble for construction of High way Authority-Parties whose name cheques were alleged to be issued had deposed on oath that they had neither encashed cheque nor received amount-Order of Tribunal affirming the disallowance is affirmed. [S. 260A] 568
Assessee, a civil work contractor, had undertaken civil contract for widening and strengthening of existing road, repairing widening of road side shoulders etc.. He claimed to have spent certain amount on purchase of marble for construction of office of Highway Authority. AO disallowed expenses claimed for purchase of marble. On appeal the Tribunal held that parties in whose names cheques were alleged to be issued had deposed on oath that they had neither encashed cheques nor received amount from assessee. Furthermore, no document was found on record, which showed that contract of construction of such office was also given to assessee. Tribunal held that since expenses were not connected to work undertaken by assessee, expenses incurred were bogus expenses. On appeal the High Court affirmed the order of Tribunal. No substantial question of law. (AY. 2010-11)
Ramesh Harbibhau Gawli v. ITO [2024] 167 taxmann.com 323/ 467 ITR 9 (Bom)(HC)
Editorial : SLP of assesse is dismissed, Ramesh Harbibhau Gawli v. ITO (2024) 467 ITR 161 / 301 Taxman 407 (SC)

S. 37(1) : Business expenditure-Compensation-Subsidiaries-Captive use –Allowable as revenue expenditure. [S. 260A] 569
Assessee owned two mines which were used by its subsidiaries for captive use. However, ores available in said mines were not suitable for production and were sold in open market. Later, subsidiaries purchased ores of desired grade from outside parties which resulted in substantial financial loss. Assessee paid compensation to its subsidiaries for financial loss incurred and claimed same as expenditure. AO denied said claim on ground that it was not incurred wholly and exclusively for purpose of business of assessee. Tribunal allowed the claim. On appeal the High Court held that it could not be said that there was no intimate connection between assessee and two subsidiaries as far as business activities were concerned and since compensation paid by assessee was

to recoup business losses of subsidiaries which was irrecoverable as far as assessee was concerned, expenditure claimed by assessee was to be allowed. (AY. 2006-07 to 2009-10)
PCIT v. Industrial Development Corporation of Orissa Ltd(2023) 147 taxmann.com 298 (Orissa)(HC)
Editorial : SLP of revenue dismissed, as there was delay of 526 days, delay was not properly explained, PCIT v. Industrial Development Corporation of Orissa Ltd. (2024) 300 Taxman 603 (SC)

570 **S. 37(1) : Business expenditure-Capital or revenue-Lease hold building-Failure to produce any material-Capital expenditure-Depreciation is allowed. [S. 32(1), Explanation.]**
Assessee incurred certain expenditure on a leasehold building and claimed same as revenue expenditure. AO disallowed assessee's claim and held that expenditure was in nature of capital expenditure and invoking Explanation 1 to S. 32(1) held that capital expenditure incurred on leasehold building was to be capitalized and depreciation is allowed. Order of AO is affirmed by CIT (Appeals) and Tribunal. On appeal High Court affirmed the order of the Tribunal. (AY. 2009-10)
Hotel Allied Trades (P.) Ltd. v. Addl. CIT (2024) 300 Taxman 61 (Ker)(HC)

571 **S. 37(1): Business expenditure-Provision for contingent liabilities-Order of Tribunal is affirmed-No substantial question of law. [S. 260A]**
Dismissing the appeal of the Revenue the Court held that the Tribunal was right in deleting the disallowance made by the assessing authority in respect of future expenses claimed as deduction u/s 37 holding that the provision claimed by the assessee was an allowable deduction. Followed, *Bharat Earth Movers v. CIT(2000) 245 ITR 428 (SC)* (AY. 2014-15)
PCIT v. Century Real Estate Holdings Pvt. Ltd. (2024)467 ITR 13 /167 taxmann.com 220 (Karn)(HC)
Editorial : Delay of 289 days in filing the SLP is not condoned, SLP is dismissed, PCIT v. Century Real Estate Holdings Pvt. Ltd. (2024)467 ITR 16 (SC)

572 **S. 37(1): Business expenditure-Bogus expenses-Construction business-Payments made to Sub-contractors-TDS is deducted-Order of Tribunal confirming the disallowance is affirmed-No substantial question of law. [S. 260A]**
Court held that expense were not connected to the work undertaken by the assessee and was bogus expense. As regards the additional ground that was raised, by a reasoned order, the Tribunal had considered it to a certain extent which covered the partly allowed claim by the CIT (Appeals) and taking into consideration the tax deducted at source deposited by the assessee. A reasoned order had been passed disallowing the claim of the assessee. No substantial question of law. (AY. 2010-11)
Ramesh Harbibhau Gawli v. ITO (2024)467 ITR 9 / 167 taxmann.com 323 (Bom)(HC)
Editorial : SLP of assessee dismissed, Ramesh Harbibhau Gawli v. ITO (2024) 467 ITR 161/ 301 Taxman 407 (SC)

S.37(1): Business expenditure - Capital or revenue - Software Development expenses -Product abandoned on becoming obsolete due to development in technology-No enduring benefit – Allowable as revenue expenditure.[S. 260A] 573

Dismissing the appeals of the Revenue the Court held that the assessee's investment to develop a software platform for desktops had become obsolete due to rapid change in the technology and the assessee had abandoned further development as a result of which it had abandoned the product and incurred a loss. The project having been abandoned, the assessee would not get any enduring benefit. The Tribunal, on a correct analysis of the facts, had held that the expenditure was revenue and not capital in nature. There was no ground to interfere with the findings recorded by the Tribunal. (AY.2015-16, 2016-17)

PCIT v. Adadyn Technologies Pvt. Ltd. (2024)465 ITR 353 /162 taxmann.com 666 (Karn) (HC)

Editorial: SLP of revenue dismissed, PCIT v. Adadyn Technologies Pvt. Ltd. (2024)465 ITR 409/162 taxmann.com 667 /300 Taxman 112 (SC)

S. 37(1) : Business expenditure-Interest on overdue deposits-Ascertained liability-Provision for bad and doubtful debts allowable as deduction. [S. 36(1)(vii), 145] 574

High Court affirmed the order of Tribunal deleting the disallowance and provision for bad and doubtful debts. (AY. 2013-14 to 2015-16)

PCIT v. Oriental Bank of Commerce Ltd. (2024) 464 ITR 563 (Delhi)(HC)

S. 37(1) : Business expenditure-Payment to Haryana State Agricultural Board-Statutory functioning-Application of income-Allowable as deduction-Penalty order is quashed as the quantum disallowance is deleted. [S. 260A, 271(1(c)] 575

Assessee (Market Committee) paid a certain amount to Haryana State Agricultural Board (Board) and stated that payment had been made to the Board on account of development works on its behalf and claimed deduction of the same as application of income. AO held that payment as repayment of loan taken by assessee from Board for construction of rural roads and held that payment of liability of old loan was not allowable as application of income. CIT (Appeals) held that amount had been paid to Board for expenditure which Board had incurred on behalf of assessee and same is allowable as application of income. ITAT set aside the order of CIT (Appeals) and restored order of AO. On appeal the Court held that since receipt issued by Board for aforesaid payment showed that amount was paid for development works and Board had incurred expenditure on development works on account of assessee, payment is made to Board towards statutory functions and it is not for repayment of any loan. Accordingly, held as allowable as application of income. As the quantum addition is deleted. Penalty order is quashed. (AY. 2007-08)

Market Committee v. ACIT (2024) 298 Taxman 473 /467 ITR 118 (P&H)(HC)

S. 37(1) : Business expenditure-Provision for salary and wages-Justice Palekar Award-Ex-gratia bonus-Allowable as expenditure. [S. 36(1)(ii), 260A, Payment of Bonus Act, 1965] 576

Assessee debited a certain amount representing provision for salary and wages arising out of Justice Palekar Award for period 1-1-1986 to 30-6-1986 on the basis of a

memorandum of settlement between management and employees signed on 8-5-1987 and claimed deduction of same as expenditure in AY 1987-88. AO disallowed the assessee's claim. Tribunal held that liability for salary and wages arising out of Justice Palekar Award is not allowable as expenditure in AY in question but only in year in which agreement between management and employees was entered into. On appeal the Court held that since services were rendered by employees during relevant previous year, Tribunal is not right in its view. Accordingly the liability for salary and wages was allowable as expenditure in AY in question. Court also held that ex-gratia bonus paid to employees over and above eligible bonus under Payment of Bonus Act, 1965 was allowable as expenditure. (AY. 1987-88)
Indian Express Newspapers (Bombay) Ltd. v. CIT (2024) 298 Taxman 507/(2025) 475 ITR 506 (Bom.)(HC)

577 **S. 37(1) : Business expenditure-Capital or revenue-Purchase of software-Not necessary that income must be earned because of such expenditure. [S. 28(i)]**
Dismissing the appeal of the Revenue the Court held, that the AO's approach was that the assessee was not earning revenue. This approach was completely misdirected. The disallowance of the expenditure was not justified. (AY. 2013-14, 2014-15)
PCIT v. Hike Pvt. Ltd. (2024)462 ITR 183 /158 taxmann.com 162 (Delhi)(HC)
Editorial : SLP dismissed, PCIT v. Hike (P.) Ltd. (2024) 299 Taxman 447 / 299 Taxman 178 / 464 ITR 394 (SC)

578 **S. 37(1) : Business expenditure-Insurance broker-Supervisory and risk management charges paid to its sister concerns-Allowable as revenue expenditure.**
AO disallowed supervisory and risk management charges paid to its sister concerns on ground that amount was vis-à-vis prospective clients. CIT(A) deleted the disallowance. Tribunal affirmed the disallowance. On appeal the Court held that the fact that expenses were incurred for prospective clients should be good enough for assessee to claim deduction qua same, as every expense does not necessarily translate into corresponding income. (AY. 2011-12)
PCIT v. Trinity Insurance Brokers (P.) Ltd. (2024) 297 Taxman 38 (Delhi)(HC)

579 **S. 37(1) : Business expenditure-Management fees-Onus discharged-No substantial question of law. [S. 260A]**
Dismissing the appeal of the Revenue the Court held that since there was no doubt that, given material placed on record, onus cast on assessee was in fact discharged, no substantial question of law. (AY. 2013-14, 2014-15)
PCIT v. Anand Divine Developers (P.) Ltd. (2024) 297 Taxman 353 (Delhi)(HC)

580 **S. 37(1): Business expenditure-Commission-Reasonableness to be considered from point of view of businessman-Revenue cannot rewrite the agreement-Appeal allowed. [S. 260A]**
Held that the AO and the Tribunal were unjustified in disallowing part of the commission payment, given the assessee's provision of detailed payment records and confirmation by commission agents via proper banking channels. Reasonableness to be considered from point of view of businessman. The revenue cannot bifurcate the commission payment between assistance in securing tenders and follow-up for payment

recovery, as it amounted to rewriting the agency agreements, which were clear and genuine. Appeal allowed. (AY. 1986-87 to 1988-89)
Indian Hume Pipe Co. Ltd v. CIT [2023] 155 taxmann.com 415 / [2024] 461 ITR 341 (Bom) (HC)

S. 37(1) : Business expenditure-Capital or revenue-Amounts paid as royalty to parent company for use of its trademark-Allowable as revenue expenditure-Employees stock option-Allowable as revenue expenditure-Interest on excess refund is not deductible. [S. 143(1)] 581
Held that the assessee-companies had paid royalty to the parent company for using its logo, based on the turnover and claimed deduction treating the expenses as revenue in nature. The royalty payment made by the assessee, for use of logo or trademark for a particular period, for improvement and expansion of business, would qualify as revenue expenditure. Held that the Tribunal was correct in holding that the employees' stock option plan expenditure was revenue in nature and the assessee was entitled to deduction thereof. Held that the interest charged on the excess amount refunded to the assessees, while processing returns u/s 143(1) of the Act could not be treated as expenditure for earning the income or for business purpose. The interest was levied on the amount refunded to the assessees, which they were holding and hence, it was not eligible for deduction. (AY. 2003-04 to 2014-15)
Shriram Transport Finance Co. Ltd. v. ITO (OSD) (2024)460 ITR 66 (Mad)(HC)

S. 37(1) : Business expenditure-Derivative contracts-Forward contracts-Foreign Exchange fluctuation loss-Loss is allowable. [S. 28(i)] 582
Held that the assessee had entered into derivative contracts in order to hedge its exchange risk in respect of export proceeds receivable by it in foreign exchange. Forward contracts were not entered into by the assessee by way of trading per se in foreign exchange derivatives. Consequently, the Central Board of Direct Taxes Circular No. 3 of 2010 dated March 23, 2010 had no application. Loss allowable as deduction. (AY. 2012-13)
PCIT v. Emmsons International Ltd. (2024)460 ITR 715 /158 taxmann.com 10 (Delhi)(HC)
Editorial : SLP rejected, PCIT v. Emmsons International Ltd. (2024)297 Taxman 4/460 ITR 718 (SC)

S. 37(1): Business expenditure-Capital or revenue-Royalty for use of logo of company-Expenses on employees stock option plan-Revenue expenditure. [Companies Act, 1956, 2(15A), 2((37)] 583
Tribunal held that the royalty paid by the assessee towards the use of logo of a company was to be treated as revenue expenditure and the expenditure incurred on employees' stock option plan was allowable as revenue expenditure. High Court affirmed the order of the Tribunal. (AY. 2010-11, 2011-12)
CIT v. Shriram City Union Finance Ltd. (2024)460 ITR 232/161 taxmann.com 218 (Mad)(HC)

S. 37(1): Business expenditure-Non-Compete fees paid to retiring partner-Allowable as revenue expenditure. 584
Held that Non-Compete fees paid to retiring partner is allowable as revenue expenditure. (AY. 2018-19) (ITA No. 249/ Ahd/ 2024 dt 16-7-2024)
Samkeet Arya Homes LLP v. ITO (2024) Chamber's Journal-August-P. 170 (Amritsar)(Trib)

585 **S. 37(1): Business expenditure-Capital or revenue-Project cost-Pending capitalisation-Written off-Allowable as revenue expenditure.**
Held that project cost pending for capitalization is written off is allowable as revenue expenditure. (AY. 2014-15)(ITA No. 3109/ Del/ 2018 dt-30-5-2024)
IHHR Hospitality Pvt Ltd v. Add. CIT(2024) Chamber's Journal-July-P. 122 (Delhi)(Trib)

586 **S. 37(1): Business expenditure-Capital or revenue-Registration charges of new and existing patents-Allowable as revenue expenditure.**
Tribunal held that registration expenses incurred on the existing as well as new patents are wholly and exclusively incurred for the purpose of business and are revenue in nature. (AY. 2010-11, 2011-12)
ITC Ltd v. ACIT (2024) 230 TTJ 921 / 38 NYPTTJ 626 (Kol)(Trib)

587 **S. 37(1): Business expenditure-Relief material given to Tsunami victims-Not allowable as business expenditure.**
Held that the assessee having voluntarily distributed relief materials to the victims of Tsunami, it is only an act of genuine philanthropy; expenditure incurred thereon cannot be said to have been laid out wholly and exclusively for the purposes of business and, therefore, the cost of said relief materials is not allowable as business expenditure. (AY. 2005-06)
Hindustan Unilever Ltd. v. Dy. CIT (2024) 232 TTJ 861 / 38 NYPTTJ 1420 (Mum)(Trib)

588 **S. 37(1): Business expenditure-Finance charges-Treated as deferred revenue expenditure or prepaid expenditure in the books of accounts over the period of loan-Allowable as deduction-Bad debt-matter remanded. [S. 36(1)(viia), 145]**
Held that expenditure towards finance charges including prepaid finance charges, if any, is allowable in the year of payment itself, even though the said expenditure has been treated as deferred revenue expenditure or prepaid expenditure in the books of accounts over the period of loan. Tribunal also held that limit of 5% of total income specified in S. 36(1)(viia)(d) is the upper limit. Matter is remanded back to the AO. (AY. 2012-13, 2017-18)
Cholamandalam Investment & Finance Co. Ltd. v. Dy. CIT (2024) 231 TTJ 840 / 38 NYPTTJ 1060 (Chennai)(Trib)

589 **S. 37(1): Business expenditure-Advertisement and sales promotion-Order of CIT(A) deleting ad-hoc disallowance of 20% is affirmed.**
Held that the CIT(A) is justified in deleting ad-hoc disallowance of 20% of advertisement and sales promotion expenses. (AY. 2016-17, 2018-19)
Cleartrip (P) Ltd v. DCIT (2023) 156 taxmann.com 552/ (2024) 228 TTJ 178 / 235 DTR 129 / (Mum) (Trib)

590 **S. 37(1): Business expenditure-Interest on tax deduction at source-Not allowable as business expenditure.**
Held that interest on tax deduction at source is not allowable as business expenditure. (AY. 2013-14)
India Flysafe Aviation Ltd. v. DCIT (2024) 159 taxmann.com 1219 /228 TTJ 982 / 236 DTR 185 / 38 NYPTTJ 307 (Delhi)(Trib)

S. 37(1): Business expenditure-Cash payments –Distributor of milk products-The AO is directed to disallow 4 %of cash expenses. 591

Tribunal held that considering the nature of business being Distributor of milk products, profit margin being very less, the AO is directed to disallow 4% of cash expenses. (AY. 2008-09 2010-11 to 2013-14)

ITO v. K. Murugan (2023) 37 NYPTTJ 861 / (2024) 227 TTJ 121 / 233 DTR 72 (Chennai) (Trib)

S. 37(1): Business expenditure-Professional fees-Negotiating debt funding-Tax deducted-Payment through banking channels-, Recipients did not file return is not sufficient to disallow payment 592

Held that the assessee could not be penalised for the failure, if any, of the recipients. If the recipients of professional fees are able to arrange loan funds for the assessee, then a businessman would necessarily pay fees. The loan of Rs. 43 crores was obtained by the assessee from PNB and the professional fees had been paid for negotiating the loan. Therefore, the AO, is not justified in disallowing the claim of payment of professional fees, when the payment was through banking channel and tax is deducted at source merely because the recipient has not filed the return of income. (AY. 2018-19)

BKS Galaxy Realtors LLP v. Dy. CIT (2024)116 ITR 175 (Mum)(Trib)

S. 37(1): Business expenditure-Capital or revenue-Remove defect in title of immoveable property-One time final payment of disputed amount of impact fees to Municipal Corporation-Damages or penalty or interest-Allowable as revenue expenditure. [S. 32, Municipal Corporation Act] 593

The AO treated the one time final payment of disputed amount of impact fees to Municipal Corporation as capital expenditure and allowed depreciation at 10 %. On appeal the CIT(A) affirmed the order of the AO. On appeal the Tribunal held that the payment is allowable as revenue expenditure. Followed *Prakash Cotton Mills Pvt Ltd v. CIT(1993) 201 ITR 684 (SC)* (AY. 2015-16)

Asiatic Colour Chem Ind. Ltd. v. Jt. CIT (2024)116 ITR 7 (SN)(Ahd)(Trib)

S. 37(1): Business expenditure-Transport and hiring charges –Deletion of ad-hoc disallowance of 10% is affirmed and disallowance of 2% on account of wage and labour charge is affirmed. 594

Held that the order of CIT(A) Deletion of ad-hoc disallowance of 10% is affirmed and disallowance of 2% on account of wage and labour charge is affirmed. (AY. 2014-15)

Dy. CIT v. Rajendra Gulabchand Shah (2024)116 ITR 21 (SN)(Mum)(Trib)

S. 37(1): Business expenditure-Method of accounting-Completed-contract method-Books of account not rejected-Expenditure on completed project for defects and finishing allowable. [S. 145(3)] 595

Held that though the project was complete and handed over, the expenditure incurred on defects and finishing touches of the building was an allowable expenditure. The AO did not dispute the expenditure except for the cost of lift, which was an allowable expenditure as no builder would purchase the lift till the structure was complete, and the address on the invoice showed purchase of the lift for the completed project.

Moreover, no incriminating material was found against the assessee and the expenditure in the books was examined during survey. Neither S. 145(3) was invoked nor were the books of account rejected. Expenditure on the lift for the completed project is allowable as deduction. (AY. 2016-17)
Royal Mahanagar Developers v. Dy. CIT (2024)116 ITR 48 (SN) (Cuttack)(Trib)

596 **S. 37(1): Business expenditure-Ad-hoc disallowance-Salary-business promotion expenses, commission,miscellaneous expenses, service and maintenance expenses, telephone,-Repair to building-Books of account not rejected-Disallowance is deleted. [S. 143(3)]**
Held that the ad hoc disallowances made without pointing out any specific instance with respect to any of the disallowance and for the general reason of preventing any possible revenue leakage, could not be upheld. The assessee could not be subjected to increased tax demand only on the presumption that there could have been revenue leakage, when the assessee had duly explained each and every expenditure. Disallowance is deleted. (AY. 2013-14)
Sadana Electric Store v. Dy. CIT (2024)116 ITR 33 (SN)(Lucknow)(Trib)

597 **S. 37(1): Business expenditure-Capital or revenue-Hotel-renovation, refurbishment and repairs-Consultancy payments-Allowable as revenue expenditure. [S. 28((i)]**
On appeal the court held that expenses incurred by assessee-hotel on renovation, refurbishment and repairs, were in nature of revenue expenditure and allowable as deduction. Court also held that the payment made by assessee to an interior architect, for consultancy and supervision of interior décor of existing hotel of assessee under 'renovation and refurbishment' is allowable as revenue expenditure. (AY. 1993-94)
Asian Hotels Ltd. v. CIT (2024) 296 Taxman 69 (Delhi)(HC)

598 **S. 37(1): Business expenditure-Capital or revenue-Stock brokerage-Expenditure on broadband, lease rent, software customisation, facility management, repair and maintenance-Allowable as revenue expenditure. [S. 32, 40(a)(ia)]**
Held that stock brokerage, Expenditure on broadband, lease rent, software customisation, facility management, repair and maintenance is allowable as revenue expenditure. No change in facts and circumstances from earlier years. Order of Tribunal is followed (AY. 2012-13)
HDFC Securities Ltd. v. CIT (Appeals) (2024)115 ITR 179/ 169 taxmann.com 365 (Mum) (Trib)

599 **S. 37(1): Business expenditure-Huge expenses of purchases, job-work payment, petrol and transport expenses Compared to preceding year-Failure to discharge the onus-Addition is affirmed.**
Held that the assessee failed to discharge the onus of substantial huge expense of purchases, job-work payment, petrol and transport expenses compared to preceding year. Disallowance is affirmed. (AY. 2018-19)
Aerotech Enterprise v. ITO (2024) 115 ITR 78 (SN)/ 168 taxmann.com 557 (Ahd)(Trib)

S. 37(1): Business expenditure-Capital or revenue-Product registration expenditure-Revenue expenditure. 600

Held that product registration expenditure is allowable as revenue expenditure. (AY. 2010-11)

Cadila Pharmaceuticals Ltd. v. ACIT (2024) 115 ITR 51 (SN)/ 162 taxmann.com 229 (Ahd) (Trib)

S. 37(1): Business expenditure-Foreign exchange fluctuation losses-Hedging-Foreign exchange risks in respect of exports and imports-Loss is not speculative-Allowable as business loss. [S. 28(i)] 601

Held that the currency settlement took time after lodgement to be realised resulting in fluctuation loss. Losses arising from such foreign exchange contracts are business losses not speculative. Allowable as business loss. (AY. 2010-11)

Cadila Pharmaceuticals Ltd. v. ACIT (2024) 115 ITR 51 (SN)/ 162 taxmann.com 229 (Ahd) (Trib)

S. 37(1): Business expenditure-Commission payments-Non-service of notice u/s 133(6)-Evidence and details furnished in remand report-Denial of expenditure for mere return of summons unserved is improper. [S. 133(6)] 602

That deduction claimed for the amount paid as commission could not be disallowed merely on the ground that the summons served on the parties came back unserved, when the assessee had produced all evidence and details before the CIT (Appeals) as additional evidence on which a remand report had also been sought. Accordingly, no addition could be made on the amount paid as commission. (AY. 2003-04)

Hindalco Industries Ltd. v. Dy. CIT (2024) 114 ITR 502 (Mum)(Trib)

S. 37(1): Business expenditure-Community development-Operation of aluminium mines causing pollution in neighbourhood-Assistance with respect to drinking water, education, women and children welfare, etc., for villagers-Commercial exigency to ensure smooth running of factories-Allowable as deduction. 603

That the Tribunal decision was set aside by the Calcutta High Court as the assessee, being in the business of manufacturing aluminium products that caused pollution in the surrounding areas, incurred expenses for drinking water supply, women and children welfare, medical services and educational support, which were backed by commercial exigency to foster harmony with the villagers in the areas surrounding the mines and necessary to ensure smooth running of the factories and to avoid industrial problems. The expenditure incurred on sundry development was wholly and exclusively for the purpose of the business. *CIT v. Nicholas Piramal (India) Ltd. (I. T. A. No. 1586 of 2013, dated June 10, 2015 (Bom)(HC)* (AY. 2003-04)

Hindalco Industries Ltd. v. Dy. CIT (2024) 114 ITR 502 (Mum)(Trib)

S. 37(1): Business expenditure-Membership fees for club-Welfare of employees providing business benefits-Allowable as expenditure. 604

Held that by subscribing to the membership of the club, no capital asset was created or brought into existence. The privilege to use the facilities of the club was alone conferred on the assessee and that too for a limited period. The expenses were for running the

business with a view to produce benefits to the assessee. It could not be said that the subscription fee expenditure was for the employees' personal use. The welfare of the employees secured therefrom went towards running the assessee's business and in producing business benefits. (AY. 2003-04)
Hindalco Industries Ltd. v. Dy. CIT (2024) 114 ITR 502 (Mum)(Trib)

605 **S. 37(1): Business expenditure-Capital or revenue-Expenditure-Disallowance on percentage basis-Disallowance on estimate basis is not proper.**
Details filed hence disallowance on estimate basis is not proper. (AY. 2003-04)
Hindalco Industries Ltd. v. Dy. CIT (2024)114 ITR 502 (Mum)(Trib)

606 **S. 37(1): Business expenditure-Interest on capital borrowed-Advances and loans to Associated enterprises-Advances Converted to equity in subsequent year not rendered quasi capital unless conversion made at time of grant of loan-Matter remanded to the CIT(A) [S. 36(1)(iii), 92]**
Held that all international transactions between associated enterprises were primarily guided by the principle of commercial expediency. The amounts advanced by the assessee towards the associated enterprises were inextricably linked with export sale of finished goods or yielded economic benefits to the assessee or that the advances were given out of interest-free funds available with the assessee, were irrelevant consideration while deciding the issue of charging of interest by the assessee from its associated enterprises since transfer pricing in respect of international transactions between associated enterprises was to ensure that there was no tax-base erosion at the India level nor shifting of profits to an overseas jurisdiction with a view to avoid taxes. Matter remanded to CIT(A). (AY. 2009-10, 2010-11, 2011-12)
Intas Pharmaceuticals Ltd. v. ACIT (2024)114 ITR 434 (Ahd)(Trib)

607 **S. 37(1): Business expenditure-Funds raised by issue of debentures-Allowable as deduction.**
Held that there was no infirmity about the specific finding in the order of the CIT (Appeals) that the funds received on issue of debentures were used by the assessee in the course of business, that these funds have not been deployed in any new projects and that the debentures were purely in the nature of loans to fulfil the working capital requirements of the assessee and, accordingly, allowable u/s 37(1). (AY. 2009-10, 2010-11, 2011-12)
Intas Pharmaceuticals Ltd. v. ACIT (2024)114 ITR 434 (Ahd)(Trib)

608 **S. 37(1): Business expenditure-Capital or revenue--Share issue expenses-Transfer of funds from accumulated profit to share capital-Allowable as revenue expenditure.**
Held that the CIT (Appeals) was correct in holding that there was no inflow of funds from issue of bonus shares as held by the AO but only transfer of reserve funds from the accumulated profit to the share capital in the form of bonus shares, and, accordingly, the claim of expenditure on issue of shares was allowable as an item of revenue (AY. 2009-10, 2010-11, 2011-12)
Intas Pharmaceuticals Ltd. v. ACIT (2024)114 ITR 434 (Ahd)(Trib)

S. 37(1): Business expenditure-Capital expenditure of intangible nature accounted as capital work-in-progress-Matter remanded for verification. [S. 32] 609

Order of Tribunal for earlier year is followed the matter regarding claim of expenditure u/s 35(1)(iv) was remitted back to the AO for proper verification of the expenses incurred on intangibles and accounted under capital work-in-progress on which no depreciation had been claimed later on. (AY. 2012-13)

Intas Pharmaceuticals Ltd. v. ACIT (2024)114 ITR 546 (Ahd)(Trib)

S. 37(1): Business expenditure-Software licence expenditure-Allowable as revenue expenditure. 610

Held that Software licence expenditure is allowable as revenue expenditure. Order of CIT(A) is affirmed. (AY. 2017-18)

ACIT v. First Advantage P. Ltd. (2024)114 ITR 45 (SN)(Mum)(Trib)

S. 37(1): Business expenditure-Payments to contractors for packing, loading and unloading-Opportunity of cross examination is not given-Disallowance is deleted. [S. 153A] 611

Held that payment payments to contractors for packing, loading and unloading cannot be disallowed as without giving an opportunity of cross examination. Disallowance is deleted. (AY. 2007-08 to 2009-10)

ACIT v. Jindal Poly Films Ltd. (2024)114 ITR 72 (SN)(Delhi)(Trib)

S. 37(1): Business expenditure-Entertainment expenses-Major expenses are through banking channel-Rebates and discounts-Revenue cannot decide what constitutes reasonable expenditure –-Enterprise resource planning software expense-Capitalised in books of account-Allowable as revenue expenditure, though the claim was not made in the original or revised return-Advertisement expenses-Purchase of Ice boxes, plastic tables and chairs, bearing logo-Allowable as business expenditure. [R. 46A] 612

Held that entertainment expenses are through banking channel hence, addition is deleted. As regards rebates and discounts, the Revenue cannot decide what constitutes reasonable expenditure-Disallowance is deleted. Enterprise resource planning software expense which is capitalised in books of account, allowable as revenue expenditure, though the claim was not made in the original or revised return. As regards advertisement expenses, such as purchase of Ice boxes, plastic tables and chairs, bearing logo, disclosed declared rate of profit hence no further disallowance can be made. (AY. 2016-17)

ACIT v. Ludhiana Beverages P. Ltd. (2024) 114 ITR 81 (SN)(Amritsar)(Trib)

S. 37(1): Business expenditure-Capital or revenue-Product development expenses-Project dropped and expenses written off-No new software in existence and no enduring benefit-Allowable as revenue expenditure. 613

Held that product development expenses is allowable as revenue expenditure as the project dropped and expenses written off. There is no new software in existence and no enduring benefit. (AY. 2013-14)

Global Tech India P. Ltd. v. ITO (2024)114 ITR 59 (SN)(Ahd)(Trib)

614 **S. 37(1): Business expenditure-Amortisation of expenditure-Roc fees for share application money amortised over five years-Allowable as deduction.**
Held that the assessee incurred expenditure towards ROC fees for share application money, which it had amortised over a period of five years. The first year of claim was the AY 2012-13. Allowable as deduction. (AY. 2013-14)
Malbros Holdings P. Ltd. v. ITO (2024)114 ITR 25 (SN)(Delhi)(Trib)

615 **S. 37(1) : Business expenditure – Bogus purchases – Selling & marketing expenses – MCI Regulations – ESOP- Hotel and travel expenses benefiting doctors, and air tickets for doctors' conferences were disallowed- Ad-hoc disallowance of 10% without rejection of books was held unjustified. [S. 37(1) Expln. 1, 69C, CBDT Circular No. 5/2012, MCI Regulations, 2009]**
The Tribunal held that entire purchases cannot be treated as bogus merely on uncorroborated employee statements; applying a profit rate of 8% is reasonable. Professional fees addition was deleted. Sales promotion and marketing expenses incurred prior to 14-12-2009, including gifts, conferences, journals, brand recall items under ₹ 1,000, and camp expenses benefitting patients, were held allowable, as MCI Regulations and CBDT Circular applied prospectively. Sponsorships to trade bodies, symposium participation, stalls, literature, conveyance reimbursements, and ESOP expenses were also held deductible. However, hotel and travel expenses benefiting doctors, and air tickets for doctors' conferences were disallowed. Ad-hoc disallowance of 10% without rejection of books was held unjustified. (AY. 2009-10 to 2012-13, 2014-15)
IPCA Laboratories Ltd. v. Dy. CIT (2024) 113 ITR 53 / 230 TTJ 409 / 161 taxmann.com 511 (Mum)(Trib)

616 **S. 37(1): Business expenditure -Capital or revenue-Depreciation-Manufacturing concern-Expenditure on Jigs and Fixtures-Written off over two years-Capital in nature-Entitled to depreciation. [S. 32]**
Held that the assessee-company was not treating jigs and fixtures as revenue expenditure in its books of account but was writing off the expense over a period of two years since it derived long-term enduring benefit from them. As a result, the decision of the Commissioner (Appeals) to treat the expenditure as capital expenditure and allow depreciation on the brought-forward written-down value is upheld (AY. 2007-08)
Bundy India Ltd. v. Dy. CIT (2024)113 ITR 505 (Ahd)(Trib)

617 **S. 37(1): Business expenditure-Capital or revenue-Expenses on product registration and support services, trademark registration-Fees and patent registration fees-Revenue expenditure.**
Held that the issue of product registration expenses and expenses for product registration support services, trademark registration fees and patent registration fees are allowable as revenue expenditure. (AY. 2015-16)
Zydus Lifesciences Ltd. v. Dy. CIT (2024)113 ITR 725 (Ahd)(Trib)

S. 37(1): Business expenditure-Providing Documentation And Administration support in relation to vessel traffic at ports and co-ordination with various Government authorities to obtain clearances, certificates and approvals - Accrual of income-Accrual of income-Loan to director-Interest offered to tax-Interest written off-Matter remanded to Commissioner (Appeals) to verify the facts. [S. 4, 5] 618

Held that the assessee having stated that it was ready to produce evidence in regard to the dock and logistics expenses and services, that the assessee was to be granted more opportunity to produce the evidence. Matter remanded to Commissioner (Appeals). As regards interest written off the details were furnished hence the matter remanded to the Commissioner (Appeals) for adjudication after verification of facts. (AY. 2015-16)

Bengal Tiger Line India P. Ltd. v. ITO (2024)113 ITR 11 (SN)(Chennai)(Trib)

S. 37(1): Business expenditure-Capital or revenue-Contribution to corpus fund of International Solar alliance for awards and prizes-Allowable as revenue expenditure. 619

Held that sponsorship expenditure is in nature of revenue expenditure since incurred pursuant to objectives of assessee and statutory obligation to promote solar energy. Order of CIT(A) is affirmed. (AY. 2020-21)

ACIT v. Karnataka Renewable Energy Development Ltd. (2024)113 ITR 9 (SN)(Bang)(Trib)

S. 37(1): Business expenditure-Disallowance for inflated purchases-Self-made vouchers not containing any details such as names of supplier or mode of payment-Disallowance is affirmed. 620

Held that the assessee produced self-made vouchers and bills with no proper details. Even before the Tribunal the assessee had not produced any details in respect of the suppliers from whom it had obtained vouchers and bills for the Assessing Officer to verify the genuineness of the claim. Addition is affirmed. (AY. 2014-15)

Gangapura Nagaraja Iyer Srinivasa v. ACIT (2024)113 ITR 78 (SN)(Bang)(Trib)

S. 37(1): Business expenditure-Warranty provision-Provision is calculated based on DCF method in a scientifically sound and consistent method which complied with Accounting Standard 29 (AS-29)-Allowable as deduction. [S. 145] 621

Assessee is engaged in manufacturing of engineering goods. It made provision for warranty expenses in relation to a contract with Chhattisgarh Government for supply, installation, and commissioning of solar photovoltaic (SPV) irrigation pumps, which included a five-year (60 months) on-site warranty. Assessing Officer held that since it was first year of operation for SPV pumps, warranty provision was deemed a contingent liability under AS-29, as it lacked a reliable estimate based on past data. He further concluded that warranty provision was an ad-hoc estimate without a scientific basis. He thus, classified provision as a contingent liability and disallowed. CIT(A) up held the order of the AO. Tribunal held that assessee calculated provision for warranty expenses based on discounted cash flow (DCF) method, which considered inflow from solar project, five-year warranty period and discount rate of 14 per cent. Provision for warranty expenses made by assessee in a in a scientifically sound and consistent method which complied with AS-29. Disallowance is deleted. (AY. 2017-18)

Rotomag Motors And Controls (P.) Ltd. v. ACIT (2024) 209 ITD 329 (Ahd)(Trib.)

622 **S. 37(1) : Business expenditure-VAT penalty is compensatory in nature and would be allowable as deduction.**
VAT penalty is compensatory in nature and would be allowable as deduction. (AY. 2014-15)
DCIT v. Stylam Industries Ltd. (2024) 209 ITD 75 (Chd.)(Trib.)

623 **S. 37(1) : Business expenditure-Percentage of completion method (POCM)-Provision for expected contract losses-Supported by scientific basis and AS-7-Allowable as deduction and no addition can be made to book profit. [S. 115JB, 145]**
Assessee, a corporate entity engaged in dredging and marine engineering services, claimed a provision for expected contract losses based on AS-7. Assessing Officer termed provision as contingent liability and accordingly, disallowed same. The CIT(A) affirmed the order of the AO. On appeal the Tribunal held that although actual billed revenue was less, assessee, following Percentage of Completion Method (POCM), recognized additional revenue and applied same method for costs. Further, as per AS-7, probable losses from contracts must be recognized immediately, and assessee complied by estimating losses and recognizing a portion as actual loss, with remainder as a provision for losses and provision was reversed in subsequent years based on updated estimates. On it could be said that provision constituted an ascertained liability/probable loss for assessee and was made on a scientific basis. Therefore provision would be an allowable deduction and question of adding same to Book-Profit would not arise. (AY. 2016-17)
International Seaport Dredging (P.) Ltd. v. DCIT (2024) 209 ITD 515 (Chennai) (Trib.)

624 **S. 37(1) : Business expenditure-Depreciation-Temporarily suspension of business-Dormant for some times-Eligible to claim revenue expenditure and depreciation of fixed assets. [S. 32]**
Assessee is engaged in business of generating, transmitting, distributing and supplying electricity. The AO held that assessee had not carried any business activities during current assessment year and since, no revenue had been claimed for same during year, no expenses could be allowed. On appeal, Commissioner (Appeals) allowed claim. On appeal the Tribunal held that since temporarily suspension of business of assessee was with a proper reason declared on record, assessee is eligible to claim revenue expenditure as well as relevant depreciation of fixed assets during current year. Followed, *Laxmi Narayan Chettiar v. CIT(1994) 205 ITR 88(Cal)(HC), L. VE. Vairavan Chettiar v. CIT (1969) 72 ITR 114 (Mad)(HC)* (AY. 2012-13)
DCIT v. Magnum Power Generation Ltd. (2024) 209 ITD 241 (Delhi) (Trib.)

625 **S. 37(1) : Business expenditure-Part of bad debt-Capital expenditure-Alternative claim-Matter remanded to remanded to Commissioner (Appeals) to verify and consider said claim- Disallowance on staff welfare, marketing, conveyance, travel, and miscellaneous expenses is restricted to 10%. [S. 36(2)]**
Assessee claimed deduction for bad debts in profit and loss account, which Assessing Officer partially disallowed, classifying it as capital in nature and noting it had not been offered to tax in previous years, thus not meeting Section 36(2) conditions. CIT(A) up held the order of the AO.

On appeal, the Tribunal held that there is no allegation on behalf of lower authorities regarding those expenditure to be not genuine and moreover, Commissioner (Appeals) had not disposed of said ground in toto, which had caused prejudice to assessee. Therefore, issue is remanded to Commissioner (Appeals) to verify those expenditure and to consider claim of assessee in accordance with law.
Assessing Officer applied an adhoc 20% disallowance on staff welfare, marketing, conveyance, travel, and miscellaneous expenses. CIT(A) upheld the order of the AO. On appeal the Tribunal held that 20% disallowance is excessive and therefore, disallowance is reduced to 10%. (AY. 2016-17)
Aarav Fragrances and Flavors (P.) Ltd. v. ACIT (2024) 209 ITD 556 (Mum)(Trib.)

S. 37(1): Business expenditure-Prior-period expenses-Annual technical service fees-Addition is not justified-Employees Stock option plan-Matter remanded to the file of the Assessing Officer. [S. 145] 626
Following the Tribunal order of earlier year addition is deleted. As regards employees stock option, Tribunal held the preceding years, as the Tribunal had restored the matter to the Assessing Officer for fresh adjudication, in the same lines, the matter was to be once again remitted to the Assessing Officer for re adjudication. AY. 2018-19)
Axis Bank Ltd. v. Asst. CIT (2024)112 ITR 28 (Ahd)(Trib)

S. 37(1) : Business expenditure - Employees stock option plan compensation expenses-Allowable as deduction. 627
Held, that the expenses were incurred with a view to retain the talent and staff for the benefit of the company and consequently such expenses were allowable as business expenditure. Similar claim had been allowed in the earlier years by the Assessing Officer. Addition is deleted. (AY. 2017-18)
Bhartiya International Ltd. v. Dy. CIT (2024) 112 ITR 207 /227 TTJ 897/158 taxmann.com 239 (Delhi)(Trib)

S. 37(1) : Business expenditure-Corporate Social Responsibility expenses-Disallowance is justified-Qualified Institutional placement expenses-Matter remanded. [Companies Act, 2013, S. 135] 628
Held, that Explanation 2 to section 37 of the Act, put a restriction on deductibility of expenditure of any kind referred to under section 135 of the 2013 Act, i. e., corporate social responsibility expenses, with effect from the assessment year 2015-16. The corporate social responsibility expenses had been incurred by the assessee as per mandate of section 135 of the 2013 Act. Therefore, the assessee is not entitled to deduction and the findings of the Commissioner (Appeals) were upheld. As regards qualified Institutional placement expenses, matter is remanded for verification. (AY. 2015-16 to 2017-18)
City Union Bank Ltd. v. Dy. CIT (2024)112 ITR 337 /229 TTJ 139 (Chennai)(Trib)

S. 37(1) : Business expenditure-Employees' Stock Option Scheme Expenses-Disallowance is deleted. 629
Held that the assessee had deducted the difference between the market price and the price at which the option was exercised by the employees, the Assessing Officer had

completely erred in recomputing the deduction without assigning proper reasons. Therefore, the employees stock option scheme expenses were allowable deduction. (AY. 2015-16 to 2017-18)
City Union Bank Ltd. v. Dy. CIT (2024)112 ITR 337 /229 TTJ 139 (Chennai)(Trib)

630 **S. 37(1) : Business expenditure-Diversion of income by overriding title-Payment made to sister concerns - obligation arising out of agreement-Claim revenue neutral - recipients of that sum had offered it, in aggregate, as income-Adding it in hands of assessee would be double addition-Expenditure allowable. [S. 4]**
Held that the payment made to the three sister concerns is not out of its own discretion exercised in favour of these sister concerns but one made due to obligation arising out of agreement. The expenditure of Rs. 2,19,42,019 to the three sister concerns of the assessee was revenue neutral as far as the group was concerned because one of the group entities had claimed the sum of Rs. 2,19,42,019 as business expenditure and the recipients of that sum which were also group companies had offered it, in the aggregate, as income. The Commissioner (Appeals) was correct to hold that adding it in the hands of the assessee would make it a case of double addition. The expenditure of Rs. 2,19,42,019 claimed as business expenditure by the assessee is justified. (AY. 2014-15)
Dy. CIT v. Ramprastha Properties P. Ltd. (2024)112 ITR 74 (SN)(Delhi)(Trib)

631 **S. 37(1): Business expenditure-Provisions for gratuity and leave encashment-Accounting Standard-15-Claimed only actual payment made to employees-Not to be reduced earlier year provisions from current profit and loss account. [S. 145]**
Assessee-bank made annual provisions for gratuity and leave encashment based on total number of employees, following AS-15, without treating those as expenses in books. Those provisions were debited to employee benefits (Schedule 16) but were not claimed as actual expenses; only actual payments made to employees were claimed. At year-end, assessee deducted those provisions from Schedule 16, resulting in net expenses in profit and loss account. Assessing Officer held that those amounts did not pertain to current year and should not be reduced from profit and loss account. CIT(A) affirmed the order of the AO. On appeal the Tribunal held that amount which was being debited to assessee's profit and loss account was after excluding provisions of gratuity and leave encashment and real expenses pertaining to assessment year under consideration were taken into account only. Therefore, findings of Assessing Officer that same amount did not pertain to year under consideration did not match with accounting treatment made by assessee-bank, and amount not to be reduced earlier year provisions from current profit and loss account. (AY. 2015-16)
Saurashtra Gramin Bank v. ACIT (2024) 208 ITD 55/[2025] 121 ITR 417 /233 TTJ 579 (Rajkot) (Trib.)

632 **S. 37(1): Business expenditure-Advertisement expenditure-Hospital-Unethical acts-Violation of provisions of Indian Medical Council Act, (professional conduct, Etiquette and Ethics) Regulations, 2002-Not allowable as deduction.**
Assessing Officer disallowed the advertisement expenditure on ground that such expenses were categorized under unethical acts as per section 6. 1. 1 of Indian Medical

Council (Professional Conduct, Etiquette and Ethics) Regulations, 2002. Commissioner (Appeal) restricted the disallowance to 50 percent of expenditure claimed by the. On appeal by assessee and cross objection by Revenue the Tribunal held that since assessee had violated provisions of Indian Medical Council Act (professional conduct, Etiquette and Ethics) Regulations, 2002, advertisement expenditure claimed by assessee cannot be allowed as business expenditure. Order of the AO is affirmed. (AY. 2018-19)
Chalasani Hospitals (P.) Ltd. v. ACIT (2024) 208 ITD 410/232 TTJ 667 (Vishakha) (Trib.)

S. 37(1): Business expenditure-Robbery-Theft-Embezzlement-Business of gold-Loss arising from robbery-Incidental to normal business-Allowable as deduction. [S. 28(i)] 633
Assessee is engaged in business of gold. Assessing Officer disallowed the claim of loss with respect to robbery pertained to previous assessment year. The robbery loss was not debited to trading account in year ended 31-3-2014, as at initial stage robbers/ conspirators were apprehended and there was hope for recovery. Subsequently, assessee lost his hope and debited loss in profit and loss account for year ended 31-3-2015. The AO disallowed the loss. CIT(A) partly allowed the loss. On appeal the Tribunal held that loss due to embezzlement, theft, etc., is allowable deduction, if it could be proved to have arisen, out of carrying on of business and same must be incidental to it. Loss is directed to be allowed. (AY. 2015-16)
Meenawala Castings v. DCIT (2024) 208 ITD 684 (Rajkot) (Trib)

S. 37(1): Business expenditure-Provision for expenses-Unascertained liability-Not allowable as deduction. 634
Held that the assessee could not prove that the liability had arisen for the assessment year in question for services availed of in the course of the assessee's business. The provision could only be treated as unascertained liability, which had not crystallised during the assessment year under consideration. Therefore, the Assessing Officer and the Commissioner (Appeals) were justified in disallowing the provision for expenses. (AY. 2010-11, 2012-13, 2013-14, 2016-17, 2017-18)
Dy. CIT (OSD) v. Aspire Systems India P. Ltd. (2024) 110 ITR 1 / 232 TTJ 387 (Chennai) (Trib)

S. 37(1): Business expenditure-Donation to trust for construction of statue of Sardar Vallabhai Patel former statesman-Enhancing brand value-Allowable as business expenditure. [S. 80G] 635
Held that as the agro products of the assessee were sold under the brand name "Sardar", which was very popular amongst the farming community, the assessee's contention that the statue of Sardar Vallabhai Patel would significantly enhance the brand value of its products and improve sales and exports, was justified. The expenditure was, therefore, wholly and exclusively for the purpose of business on account of commercial expediency and, accordingly, was allowable under section 37. Moreover, the funding was for the State Government. Relied on Dy. CIT v. Gujarat Narmada Valley Fertilizers Co Ltd (Tax Appeal Nos 770 of 1999, 77, 78 of 2008, dated May 6, 2011. (AY. 2011-12)
Gujarat State Fertilizers and Chemicals Ltd. v. Dy. CIT (2024) 110 ITR 641 (Ahd)(Trib)

636 **S. 37(1): Business expenditure - Capital or revenue - Expenditure relating to abandoned projects - Projects linked to existing business -Amounts written off-Allowable as revenue expenditure.**

Held that abandoned projects were part of the business of manufacturing chemicals and, if the plant had come into fruition, the business expenditure of the assessee would have been much more. Therefore, the expenditure written off by the assessee had to be considered as business revenue expenditure. (AY. 2011-12)

Gujarat State Fertilizers and Chemicals Ltd. v. Dy. CIT (2024) 110 ITR 641 (Ahd)(Trib)

637 **S. 37(1): Business expenditure –Ad-hoc basis-Books of account not rejected-Disallowance of expenses and purchase differences- Books of accounts audited-Purchase differences reconciled with suppliers-Ad hoc disallowance not sustainable. [S. 133(6), 145]**

The assessee, engaged in trading sugar, had submitted complete audited books of accounts and explanations for the expenses. The Assessing Officer made disallowances on an ad hoc basis without rejecting the books, which the Tribunal found unjustified. The Tribunal deleted the disallowance related to various business expenses such as salary, interest, and administrative costs, noting that the accounts were duly audited, and no specific defects were pointed out by AO. Additionally, the AO had made an addition based on discrepancies in purchases from different suppliers. The Tribunal accepted the reconciliation provided by the assessee, explaining that the differences were due to accounting treatments of freight and timing issues. All disallowances are deleted. (AY. 2010-11)

Pankaj Kumar Kasera v. ITO (2024) 112 ITR 1 (SN) (Delhi)(Trib.)

638 **S. 37(1): Business expenditure-Repairs and Maintenance-Sales promotion-Disallowance on basis of percentage increase in expenditure in comparison to preceding year-Fallacious assumption-Disallowance is not justified.**

Held that disallowance of repairs and maintenance and sales promotion expenses on basis of percentage increase in expenditure in comparison to preceding year is fallacious assumption. Disallowance cannot be made unless shown to be not genuine. Addition is deleted. (AY. 2018-19)

Casa Grande Civil Engineering P. Ltd. v. Jt. CIT (OSD) (2024)110 ITR 65 (SN)(Chennai) (Trib)

639 **S. 37(1): Business expenditure-Payments for medical treatment of director of assessee abroad-Produced board resolution approving treatment and in ITR of chairman declared the amount as perquisite- Payment of interest on customs duty on direction of Supreme Court-Allowable as deduction-Delayed payment of contributions to provident fund-Not allowable as deduction. [S. 36(1)(va), 37(1), Expl. 1]**

Held that the assessee having submitted that given an opportunity, the assessee was in a position to produce the copy of the resolution of the board of directors approving the treatment of the chairman of the company in the U. S. A. and also file a copy of the return of the chairman declaring such amount as perquisites, in the interest of justice, the issue was to be restored to the Assessing Officer with a direction to grant

an opportunity to the assessee to file the requisite details to his satisfaction and decide the issue as per fact and law.
On second issue held that there was no infirmity in the order of the Commissioner (Appeals) allowing the payment of interest on customs duty as directed by the Supreme Court holding that the interest paid on customs duty was allowable as revenue expenditure and was not in contravention of Explanation 1 to section 37(1) of the Act The Tribunal also held that there was no infirmity in the order of the Commissioner (Appeals) disallowing the delayed payment of contributions to the provident fund. (AY. 2017-18)
Pennar Industries Ltd. v. Dy. CIT (2024)110 ITR 74 (SN) (Hyd)(Trib)

S. 37(1): Business expenditure-Sales promotion expenses-Disallowance is restricted to 15% based on earlier year. 640
Held that for earlier year the Tribunal restored the issue to the Assessing Officer for examination afresh. In the remand proceedings, the Assessing Officer made the disallowance of 15 per cent. of the expenditure and this had been accepted by the assessee. Since, the nature of the expenditure was similar to the preceding year, the Assessing Officer was to restrict the disallowance to 15 per cent. of the expenditure. (AY. 2013-14)
Lakozy Motors P. Ltd. v. Dy. CIT (2024)110 ITR 19 (SN)(Mum)(Trib)

S. 37(1): Business expenditure-Business promotion expenses-Expenditure on medical camps - Expenditure prohibited by law-Travel expenses-Expenditure incurred for business trips of partner of firm-Matter remanded to the file of the Assessing Officer 641
Assessee is engaged in trading and distribution of cardiac stents, biomedical instruments, medical instruments, equipment, and machinery. Failing to furnish item-wise detail of total expenditure Assessing Officer is directed to examine details in light of law laid down by *Apex Laboratories P. Ltd. v. Dy. CIT [2022] 442 ITR 1 (SC) and Central Board Of Direct Taxes Circular No. 5 Of 2012, Dated 1-8-2012(2012) 346 ITR 95 (St)*. As regards expenditure incurred for business trips of partner of firm as no details furnished or document furnished to prove purpose of visit. Matter is remanded to the Assessing Officer. (AY. 2013-14)
Med-Link Devices P. Ltd. v. Dy. CIT (2024)110 ITR 3 (SN)(Mum) (Trib)

S. 37(1): Business expenditure-Commission-Not related party-Higher commission-Disallowance is deleted. 642
Held that the increased commission was paid due to the difficult market situation in the export industry because of which extra efforts were put in by the commission agents, for which a higher commission was charged. Therefore, when the facts clearly showed that the expenditure was incurred wholly and exclusively for the purpose of business and there was no contrary material available on the record, merely because a higher commission was paid as compared to the preceding year that would not justify disallowance. Disallowance is deleted. (AY. 2013-14)
Srinathji Yamunaji Enterprises v. ITO (2024) 110 ITR 63 (SN)(Mum)(Trib)

643 **S. 37(1): Business expenditure-Commission-Allowable as business expenditure-Sponsorship of festival-Nothing to prove connection with the business-Disallowance is affirmed.**

Held that the business of the assessee, the work obtained, the works sub-contracted, the increase in the profits, the agreements executed, showed that the commission paid is allowable as business expenditure. As regards sponsorship fee expenditure the assessee has not proved with the connection with the business. Disallowance is affirmed. (AY. 2014-15)

Yala Construction Co. P. Ltd. v. Add. CIT (2024)110 ITR 1 (SN) (Delhi)(Trib)

644 **S. 37(1): Business expenditure-Prior period expense-Method of accounting-Not proved with necessary evidence-Commission-Lack of evidence-Disallowance is affirmed. [S. 145]**

The Hon'ble Tribunal upheld the disallowance, agreeing with the CIT(A) that there was no evidence to support that the liability crystallized in the current year. As regards commission payment the Hon'ble Tribunal upheld the disallowance agreeing with the CIT(A) that there were contradictions in recipient's income declaration and lack of evidence for services rendered. (AY. 2010-11)

Raj Auto Wheels P Ltd v. ACIT (No. 1) (2024) 111 ITR 199 (Jaipur)(Trib.)

645 **S. 37(1): Business expenditure-Capital or revenue-ROC filing fees paid for increase in share capital-Not allowable as revenue expenditure.**

The authorized share capital of the company was increased and assessee claimed deduction of ROC filing fees paid for increase in share capital. AO disallowed assessee's claim. Held expenditure incurred by the assessee was directly connected with increase in authorized capital and such expenditure being a capital in nature, could not be allowed as deduction. (AY 2013-14, 2014-15) [ITA No. 1464,1465,1521,1522/AHD/2018 dated 06/10/2023]

Sun Pharma Laboratories Ltd. v. The DCIT(Ahd)(Trib)(UR)

646 **S. 37(1): Business expenditure-Bogus purchase-Rough diamonds-Estimate addition-Estimated the profit @ 3% of the polished diamonds and @5% of the rough diamonds. [S. 143(3)]**

The AO made the disallowance of Rs. 3,46,67,496/- qua alleged purchases by holding the same as bogus purchases. Considering the peculiar facts and the assessment orders for relevant Assessment Years wherein the purchases from alleged Hawala Dealers, as involved in this case, followed the same pattern and ultimately estimated the profit @ 3% of the polished diamonds and @5% of the rough diamonds and consequently made the addition(s) accordingly. [AY 2012-13] [ITA No. 4001/Mumbai/2023 dated 30/04/2024]

Shine Star v. ACIT (Mum)(Trib) (UR)

647 **S. 37(1) : Business expenditure-Audited accounts - Ad-hoc disallowance- Books not rejected – No ad hoc disallowance permissible [S. 44AB]**

Dismissing the appeal, that the books of the assessee were duly audited under section 44AB of the Act and the Assessing Officer while making ad hoc disallowance had not rejected the books of account. When the books of account maintained by the assessee

were duly audited and had not been rejected by the Assessing Officer the ad hoc disallowance made on the basis of surmises was not sustainable. (AY. 2017-18)
ACIT v. Merchant Agri Global P. Ltd. (2024)111 ITR 45 (Trib) (SN)(Mum)(Trib)

S. 37(1): Business expenditure-Employee Stock Option (ESOP)-Disallowance is deleted. 648
Assessee-company claimed expense of certain amount on account of Employee Stock Option (ESOP). Assessee contended that shares of parent company in USA had been allotted as ESOP to assessee's employees in India and assessee had paid for these stocks options to parent company. Assessing Officer disallowed expense on ESOP on ground that it was notional and contingent in nature. On appeal the Tribunal held that supporting invoices from assessee's parent entity were placed on record before Assessing Officer to substantiate that expenses were actually incurred by assessee. Accordingly ESOP expenses is allowable as deduction. (AY. 2018-19)
DCIT v. CBRE South Asia (P.) Ltd. (2024) 207 ITD 249 (Delhi) (Trib.)

S. 37(1) :Business expenditure-Business loss-Advance for purchase of business-Failure to supply goods-Trade advances-Advance written off allowable as business loss. [S. 28(i), 36(2), 37 (1)] 649
Assessee is engaged in business of purchase and sale of cigarettes and for introducing and identifying manufacturer of Cigarettes, MSPV, Australia, was contacted and for said purpose certain sums were remitted to said company. Supplier did not supply any goods nor returned money back and, out of total sum outstanding, assessee could recover only Aus., $ USD 10,000 and balance amount could not be recovered, assessee claimed expenses under head Trade Advance Irrecoverable/written off in its profit and loss account. Assessing Officer disallowed said amount under section 36(2) and added to income of assessee. Held that since there was a direct and proximate nexus between business operation and loss of advance amount which had been written off by assessee, same is allowed to be written off under section 37(1) as business loss. (AY. 2010-11)
Roop Kishore Madan v. ACIT (2024) 207 ITD 210 (Delhi) (Trib.)

S. 37(1): Business expenditure-Sales promotion expenses-Construction project-Allowable as revenue expenditure-AS-7 was purely effective for contractor in construction, not for developers, question of capitalizing project cost of sale promotion was unjustified. [S. 145, AS-7] 650
Assessee, a civil construction developer, had only one construction project at Mulund. It had incurred expenses on sale promotion which was debited in P&L account in terms of guidance note on accounting of real estate transaction for revised 2012 issued by ICAI and accordingly, claimed as revenue expenditure. Assessing Officer disallowed expenses on basis of AS-7. CIT(A) up held the disallowance. On appeal the Tribunal held that since assessee was purely a civil construction developer and AS-7 was purely effective for contractor in construction not for developers, question of capitalizing project cost of sale promotion is unjustified. Addition is deleted. (AY. 2016-17)
PRL Developers (P.) Ltd. v. ACIT (2024) 207 ITD 753 (Mum) (Trib.)

651 **S. 37(1) : Business expenditure-Purchases related to infrastructure project-Filed taxpayer Identification number of vendors (TAN)-Failed to file Permanent Account Number and income-tax returns copies of vendors-Failure to deduct tax at source-Purchases cannot be treated as not genuine-Inadequate Investigation by Assessing Officer-Expenses are allowable-Valuation of property-Accounts-Maintaining regular books of account and transactions recorded in books of account-Addition cannot be made on the basis of Valuation Officer's report-Loose sheet-Matter is remanded. [S. 69C, 133(6), 145]**

The assessee claimed expenses for infrastructure project purchases. The assessee was asked to prove the identity and creditworthiness of the vendors. The Assessing Officer issued notices under section 133(6) of the Income-tax Act, 1961, to vendors, some of whom responded. On the ground that the assessee did not verify the parties or provide vendor ledger confirmation, the Assessing Officer disallowed specific purchases, adding amounts for the assessment years 2009-10, 2010-11 and 2011-12. The Commissioner (Appeals) upheld the disallowance in respect of one party holding the purchase not genuine, citing missing permanent account number, Income-tax return and counter-signed ledger. The Commissioner (Appeals) in respect of the second party sustained the disallowance on the ground that the assessee did not deduct tax at source. The Assessing Officer also made additions based on loose sheets and diaries. The Commissioner (Appeals) limited the addition for the assessment year 2010-11 and sustained the entire addition for the assessment year 2011-12. The Assessing Officer made an addition on the basis of the difference between the value shown in the Departmental Valuation Officer's report and the value shown by the assessee in the books of account. This was sustained by the Commissioner (Appeals). On appeal the Tribunal held that the assessee had filed a copy of the taxpayer identification number of the supplier to prove the identity and existence of business concern. Therefore, simply because the assessee had not filed copies of the permanent account number or Income-tax returns, these purchases could not be treated as not genuine. That failure to deduct tax at source is not a valid reason for considering the purchases not genuine. That the Assessing Officer picked-up certain entries in the diary reflected as cash. The Assessing Officer had not made any sort of enquiry or any investigation to find out whether the entries appearing in the diary reflected that either the assessee had received the payments or made the payments though the names of the persons were clearly mentioned in the entries made in the loose sheets. There was no statement recorded from the assessee during the course of search vis-a-vis the seized material. The Assessing Officer did not undertake a proper investigation or verification and simply added the amounts from the diary as unexplained income. The Assessing Officer also did not verify the contention that the loose sheets were unrelated or meant for site purposes. Consequently matter is remanded. That following the Tribunal's order in favour of the assessee for the assessment years 2006-07 and 2007-08, once the assessee was maintaining regular books of account and in the course of its business the assessee had recorded the transactions in its books of account, then, without pointing out any defect in the books of account and without rejecting the books of account the Assessing Officer could not proceed to make addition on the basis of the Departmental Valuation Officer's report. (AY. 2008-09 to 2011-12)

Brahmaputra Infrastructure Ltd. v. Dy. CIT (2024)109 ITR 554 (Delhi)(Trib)

652 **S. 37(1) : Business expenditure-Capital or revenue-Preliminary drilling expenses incurred on account of fees, studies and other consultancy charges-Allowable as revenue expenditure-Office renovation-Dismantling wells, sand filling, Excavation, cementing, plastering, Etc. and sundry expenses-Revenue expenditure-Purchase of furniture and fixtures for new office-Capital expenses-Depreciation is allowable-Expenditure on bifurcation of oil tank, construction of office shed, construction of slab and pipe culvert, construction of platform for tankers and foundation and towards demurrage charges for water injection plant-Expenses primarily to bring into existence capital asset-Not revenue-Entitled to depreciation-Expenditure on repairs and maintenance of leased premises-Allowable as revenue expenditure. [S. 32]**

Held, that looking into the nature of expenses incurred by the assessee coupled with the fact that the Department had not brought anything on record to show that any capital asset of enduring nature was brought into existence, the claim of the assessee on expenses incurred on preliminary drilling expenditure was to be allowed. Held, that the expenditure qualified as revenue expenditure and may be allowed as revenue expenditure. The other sundry expenses may also be allowed as revenue expenditure since no capital asset of enduring nature was brought into existence. However, expenses towards purchase of furniture and fixtures for the new office had been incurred for purchase of capital assets and were in the nature of capital expenses. These could not be allowed as revenue expenditure in the hands of the assessee. However, the Assessing Officer was to allow depreciation on such fixed assets in accordance with law after carrying out the necessary verification. Held that the expenses had been incurred primarily to bring into existence a new capital asset and did not qualify as being revenue in nature. They were not allowable. However, the assessee was entitled to claim depreciation on such expenses. Expenditure on repairs and maintenance of leased premises is allowable as revenue expenditure. (AY. 2007-08, 2008-09)

Joshi Technologies International Inc. v. Asst. CIT (IT) (2024)109 ITR 70 (Ahd)(Trib)

653 **S. 37(1): Business expenditure-Compensatory afforestation-Capital or revenue-No enduring benefit from incurrence Expenditure is allowable as revenue expenditure. [S. 145]**

Held that expenditure on compensatory afforestation, such payments were governed by various Acts with the Supreme Court making a ruling for State Governments to participate in the granting of mining leases by recovering compensation when their forests were uprooted. The funds were used for natural regeneration in which the assessee participated indirectly. It could not be said that the assessee had incurred capital expenditure giving it a benefit of enduring nature. The amount was incurred as revenue expenditure and is allowable in the year of incurrence. (AY. 2019-20)

Tata Steel Ltd. v. Dy. CIT (2024)109 ITR 18 (Mum) (Trib)

654 **S. 37(1): Business expenditure-Establishment, conveyance, guest house, maintenance, mobile and internet, travelling, show room and staff welfare-No defects in books of account-Ad-hoc disallowance is deleted. [S. 145]**

Held that books of account is not rejected hence no ad-hoc disallowance can be made in respect of establishment, conveyance, guest house, maintenance, mobile and internet, travelling, show room and staff welfare No defects in books of account. (AY. 2017-18)

Zheng Yuan Mobiles P. Ltd. v. Dy. CIT (2024)109 ITR 71 (SN)(Delhi) (Trib)

655 **S. 37(1): Business expenditure-Business loss-Capital or revenue-Writing off amount due to non-recognition of project-Directed the Assessing Officer to examine the disallowance-Dispute-Prior period expenditure paid this year-Not allowable as deduction. [S. 28(i), 145]**

Held that from the assessment years of 2007-08 to 2011-12, the assessee had offered income from carbon credits amounting to Rs. 3,09,67,422 and the Department had accepted it as other income. Now the assessee wrote off this amount due to non-recognition of the project. The same treatment which was given by the Department to the income of the assessee on carbon credits during the last five years had to be given by the Department. Accordingly, the Assessing Officer was to re-examine this issue of disallowance on carbon credits. Held that the prior period expenditure could not be allowed in assessing the income of a particular year. The assessee did not make provision in respect of prior period expenses nor filed revised return. (AY. 2012-13)

Indowind Energy Ltd. v. Dy. CIT (2024)109 ITR 68 (SN)(Chennai)(Trib)

656 **S. 37(1): Business expenditure-Contribution to Gratuity Fund-Payments to Life Insurance Corporation of India towards Group Gratuity Scheme and Employees receiving payments from Life Insurance Corporation for their Gratuity as and when occasion arose-Payments from Gratuity Fund to employee during his lifetime treated as salary-Application for approval of Gratuity Fund made in 2002-Approval granted by order dated 4-10-2023 with effect from 3-1-2023-Allowable as deduction. [S. 36(1)(v), Form No 3CD]**

Held, allowing the appeal, that during all these years, that the assessee had been making payments to the Life Insurance Corporation of India towards group gratuity scheme and claimed it as deduction. Its employees also received payments from the Life Insurance Corporation for their gratuity as and when the occasion arose. Rule 5 of Part C of the Fourth Schedule to the Income-tax Act, 1961 provides for treating gratuity fund to an employee during his lifetime as salary paid to the employee for the purpose of this Act. It was an undisputed fact that the assessee had applied for the approval of the gratuity fund in the year 2002 which remained pending with the Department without any justifiable reasons. The approval had been granted by the Principal Commissioner by order dated October 4, 2023 with effect from January 3, 2023. The assessee could not be put to an adverse situation when it had taken all the required steps for the compliance prescribed under the Act and the Rules. The Life Insurance Corporation had paid gratuity fund to the employees of the assessee in the past. In the preceding assessment year 2011-12, the Commissioner (Appeals) dealt with the same issue and allowed the assessee's claim. Accordingly, on the facts of the case, applying the principles of

reasonable construction for giving effect to the purpose and intention of the provisions of the Act, coupled with rule 5 of Part C of the Fourth Schedule wherein gratuity was treated as salary which was an allowable expense under section 37(1) of the Act, it was proper to allow the claim of the assessee. (AY. 2014-15)
Twinings P. Ltd. v. Dy. CIT (2024)109 ITR 74 (SN)/ 161 taxmann.com 390 (Kol)(Trib)

S. 37(1): Business expenditure-Provision for expenses-Treatment of disposal of effluent waste and processing charges-credited back in subsequent year-Matter remanded-Sales return-Provision made for loss of sales return, being an expenditure which was not crystallized and was an anticipated loss, could not be allowed as deduction. [S. 145] 657
Assessee had created a provision for expenses incurring for treatment of disposal of effluent waste and provision for processing charges. Assessing Officer added provision credit for effluent waste and disposal and for processing of charges. CIT(A) affirmed the order of the AO. On appeal the Tribunal held that the amount had been credited back in subsequent assessment year as income. Therefore even if provision was to be disallowed in assessment year 2010-11, then in subsequent year once assessee had credited back and offered as income then same could not be taxed again in impugned assessment year and, accordingly, Assessing Officer is directed to verify said account and if assessee had written back and credited to income then he should give consequential relief in assessment year 2011-12 and not to tax same amount in next year.
Tribunal also held that provision made for loss of sales return, being an expenditure which was not crystallized and was an anticipated loss, could not be allowed as deduction. (AY. 2010-11, 2011-12, 2017-18)
Isagro (Asia) Agrochemicals (P.) Ltd. v. DCIT (2024) 206 ITD 171 (Mum) (Trib.)

S. 37(1): Business expenditure-Capital or revenue-Share issue expenses-Preliminary expenses incurred for increase in authorized capital is capital in nature. [S. 35D] 658
Preliminary expenses incurred for increase in authorized capital is capital in nature. (AY. 2007-08, 2008-09)
ACIT (OSD) v. M. S. Khurana Engineering Ltd. (2024) 206 ITD 741 (Ahd) (Trib.)

S. 37(1): Business expenditure-Business promotion expenses-Gifts distributed at time of annual general meeting to milk producers-Allowable as deduction: Limited return on share capital-1% of share capital-Not allowable as deduction. [Companies Act, 1956, S. 581A, 581 E] 659
Assessee, a producer company, paid certain gifts to milk producers who were also members of assessee-company in order to retain them in business, said expenditure was in nature of business promotion and, thus, same is to be allowed as deduction.
The assessee debited an expenditure towards limited return on share capital which was calculated at 1% of share capital. CIT(A) allowed the claim of assessee. On appeal the Tribunal held that it is not a charge to the profit and loss account but only an appropriation of the profit and hence the Assessing Officer has rightly disallowed the claim. (AY. 2011-12, 2012-13)
ACIT v. Sri Vijaya Visakha Milk Producers Company Ltd. (2024) 205 ITD 160/227 TTJ 23 (UO) (Visakha) (Trib.)

660 **S. 37(1): Business expenditure-Product development expenses-Allowable as revenue expenditure-Liquidated damages-As part of contractual obligation with its customers for delayed supply of goods or delayed completion of projects-Allowable as deduction-** Assessee is a company engaged in business of manufacturing, supply, erection and commissioning of pollution control equipments. During year, assessee claimed expenses under head product development expenses. Assessing Officer held that expenses were incurred for product development which would give enduring benefit to assessee and, accordingly, he disallowed same. CIT(A) affirmed the order of the Assessing Officer. On appeal the Tribunal held that none of expenditure incurred thereon would give any enduring benefit to assessee. All these expenditure were genuine regular revenue expenditure incurred by assessee. Assessee had been using its own employees and material regularly purchased for its manufacturing facilities on proportionate basis for purpose of development of new product and, thus, said expenditure is purely revenue in nature. Held that liquidated damages were paid by assessee only as part of non-fulfillment of contractual obligation as per terms of contract with customers and, hence, same were to be allowed as expenditure. (AY. 2016-17)
Himenviro Environmental Engineering Co. (P.) Ltd. v. ACIT (2024) 205 ITD 237 (Delhi) (Trib.)

661 **S. 37(1) : Business expenditure-New line of business-Capital or revenue-Furniture space, home improvement, kitchen space, bathroom space and acquisition of paints manufacturing company in Ethiopia being completely a new line of business and not an extension of existing business of assessee, is capital in nature.**
Assessee-company is engaged in business of manufacturing paints and enamels. It had incurred expenditure on exploring various business opportunities such as furniture space, home improvement, kitchen space, bathroom space and acquisition of paints manufacturing company in Ethiopia. Tribunal held that since expenditure incurred on exploring business opportunities in furniture and furnishings constituted a completely new line of business and was not an extension of existing business of assessee, same is capital in nature. (AY. 2014-15)
Asian Paints Ltd. v. ACIT (2024) 205 ITD 680 (Mum) (Trib)

662 **S. 37(1) : Business expenditure-Decorative paint business-Capital or revenue-Extension of existing business-Revenue expenditure.**
Assessee-company is engaged in business of manufacturing paints and enamels. It incurred expenditure on exploring various business opportunities on decorative paints business in Indonesia and Turkey constituted an extension of existing business of assessee. Allowable as revenue in nature. (AY. 2014-15)
Asian Paints Ltd. v. ACIT (2024) 205 ITD 680 (Mum)(Trib)

663 **S. 37(1) : Business expenditure-Trip for dealers-Expenditure incurred by assessee under its trip scheme for its dealer for purpose of expanding assessee's business by encouraging dealers and distributors to achieve a specific target of purchase being closely linked to assessee's business activity is allowable expenditure.**
Assessee had incurred an expenditure under its Trip Scheme for its dealers. Assessing Officer disallowed expenditure on basis that entire trip of dealers was not for business

purposes. Tribunal held that in assessee's own case for preceding assessment years had deleted similar disallowance holding that entire trip scheme was for purpose of expanding assessee's business by encouraging dealers and distributors to achieve a specific target of purchase and, thus, scheme was closely linked to assessee's business activity. Following decision of Tribunal disallowance is rightly deleted by Commissioner (Appeals). (AY. 2014-15)
Asian Paints Ltd. v. ACIT (2024) 205 ITD 680 (Mum) (Trib)

S. 37(1) : Business expenditure-Penalty –Prior period expenses-Crystallized in year under consideration-Breach of contract-Can not be equated with offence, or something prohibited by law-Entitle to deduction. [Explanation to section 37, S. 145] 664
Assessee-company was engaged in activities of operating and maintenance of roads. It claimed deduction on account of damages paid to NHAI as business expenditure. Assessing Officer held that said expenditure was representing penalty and held that such a penalty could not be allowed as deduction under Explanation to section 37(1). Assessing Officer also found that such damage charges were pertaining to earlier year and, therefore, same could not be allowed as deduction on this count as well, being prior period expenses. CIT(A) deleted the disallowances. On appeal the Tribunal held that since provision of Explanation 1 to section 37(1) excludes allowing deduction of expenditure incurred for purpose which is an offence or prohibited by law and however penalty had been paid by assessee on account of breach of contract which could not be equated with offence, or something prohibited by law, assessee was entitled to deduction under section 37(1). Further, since amount of damage crystallized in year under consideration, it could not be said that such damages were prior period expenses. (AY. 2018-19)
ACIT v. Chittorgarh Kota Tollway (P.) Ltd. (2024) 204 ITD 223 (Ahd)(Trib.)

S. 37(1) : Business expenditure-Capital or revenue-Land development expenditure is allowable as revenue expenditure 665
During year, assessee-company claimed expenditure on account of land development expenditure. Assessing Officer disallowed claim of assessee on ground claim under section 37(1) could not be allowed unless business operation starts. Tribunal held that since Assessing Officer had already accepted in earlier assessment year that business activity of assessee had commenced, then Assessing Officer could not take a different stand in impugned year. Therefore, land development expenditure is allowable under provisions of section 37(1) as revenue expenditure. (AY. 2013-14)
DCIT v. Adani Mining (P.) Ltd. (2024) 204 ITD 269 (Ahd) (Trib.)

S. 37(1): Business expenditure –Non compete fee –Capital expenditure-Entitle to depreciation-Provision for litigation and taxation matter-Matter remanded. [S. 32] 666
The Assessee claimed payment of non compete fees as revenue expenditure. The AO treated the said expenditure as capital in nature. On appeal the Tribunal affirmed the order of the Assessing Officer. As regards provision for litigation and sales tax matter remanded to the Assessing Officer. (AY. 2012-13)
Eaton Power Quality (P.) Ltd. v. DCIT (2024) 204 ITD 323 /230 TTJ 23 (UO) (Chennai) (Trib)

667 **S. 40(a)(i) : Amounts not deductible-Deduction at source-Non-resident-Business expenditure-Commission paid to foreign agents on export of goods-Services rendered out side India-Not liable to tax in India-Not liable to deduct tax at source-No disallowance can be made [S. 9(1)(i), 37(1), 195, 260A]**

Dismissing the appeal of the Revenue the Court held that the Commission paid to foreign agents on export of goods, services were rendered out side India as the recipient is not liable to tax in India the assessee is not liable to deduct tax at source. No disallowance can be made. Order of Tribunal is affirmed. (AY. 2012-13)

PCIT v. Shantilal Khushaldas and Brothers Pvt. Ltd. (2024) 470 ITR 73 (Bom) (HC)

668 **S. 40(a)(i) : Amounts not deductible-Deduction at source-Non-resident-Salary-Order giving effect to the order of Tribunal-Once Tribunal had accorded relief to assessee on account of payment of salary to expatriate employees in foreign currency and outside India, deduction was liable to be allowed by Assessing Officer-DTAA-India-Japan. [S. 254(1), Art. 7, Art. 226]**

Assessee claimed deduction on account of payment of salary to expatriate employees in foreign currency and outside India. Assessing Officer disallowed said claim. Tribunal allowed deduction claimed by assessee. In order to give effect to Tribunal's order, Assessing Officer denied deduction claimed by assessee. On writ the Court held that once Tribunal had accorded relief to assessee, deduction was liable to be allowed by Assessing Officer. Therefore the order passed by Assessing Officer in order to give effect to Tribunal's order was to be set aside and Assessing Officer was to be directed to allow deduction claimed by assessee. (AY. 1998-99)

MUFG Bank Ltd v. ACIT (2024)300 Taxman 424 (Delhi)(HC)

669 **S. 40(a)(i) : Amounts not deductible-Deduction at source-Non-resident-Salary-Order giving effect to the order of Tribunal-Once Tribunal had accorded relief to assessee on account of payment of salary to expatriate employees in foreign currency and outside India, deduction was liable to be allowed by Assessing Officer-DTAA-India-Japan. [S. 254(1), Art. 7, Art. 226]**

Assessee claimed deduction on account of payment of salary to expatriate employees in foreign currency and outside India. Assessing Officer disallowed said claim. Tribunal allowed deduction claimed by assessee. In order to give effect to Tribunal's order, Assessing Officer denied deduction claimed by assessee. On writ the Court held that once Tribunal had accorded relief to assessee, deduction was liable to be allowed by Assessing Officer. Therefore the order passed by Assessing Officer in order to give effect to Tribunal's order was to be set aside and Assessing Officer was to be directed to allow deduction claimed by assessee. (AY. 1998-99)

MUFG Bank Ltd v. ACIT (2024)300 Taxman 424 (Delhi)(HC)

S. 40(a)(i) : Amounts not deductible-Deduction at source-Non-resident-Fees for technical services-Reimbursement of expenses-Revenue had failed to establish that said remitted fee would fall within ambit of any technical, managerial or consultative service that had been rendered-Not liable to deduct tax at source-Order of Tribunal deleting the disallowance is affirmed-OECD Model Convention, art 7. [S. 9(1)(vi), 195, 260A] 670

Assessee, a multinational company, had made reimbursement to non-residents associated enterprises (AEs). Assessing Officer held that said payment would fall within purview of section 9(1)(vii) and were therefore taxable in India as fee for technical services (FTS). Accordingly, he made disallowance under section 40(a)(i) on account of non-deduction of tax under section 195 on reimbursement of expenses. Commissioner (Appeals) and Tribunal deleted disallowance. On appeal the court held that since Revenue was not able to establish that said remitted fee would fall within ambit of any technical, managerial or consultative service that had been rendered, no substantial question of law arose for consideration.

PCIT v. JAS Forwarding (P.) Ltd. (2024) 299 Taxman 236 (Delhi)(HC)

S. 40(a)(i) : Amounts not deductible-Deduction at source-Non-resident –Non-Resident had no Permanent Establishment in India-Non-discrimination clause in Double Taxation Avoidance Agreement applicable-Disallowance is not justified-Provisions of agreement more beneficial to assessee is applicable-DTAA-India-Japan-United States of America. [S. 9O, 195, Art. 24(3), 26(3)] 671

The Assessing Officer disallowed payments made by the assessee concerning purchases from seven group companies as tax at source had not been deducted by the assessee on the payments on the ground that they were chargeable to tax in India. Five of the group companies were residents of Japan and the United States of America, while two were residents of Singapore and Thailand, respectively. The conclusion reached by the Assessing Officer about the taxability of the payments made by the assessee in India was based on the rationale that since MC Japan (one of the group companies) had acquiesced in the jurisdiction of the Revenue as it had a liaison office located in India, which was treated as its permanent establishment, the business model of the remaining group companies being identical, they would stand on the same footing. In other words, the Assessing Officer concluded that all seven group companies had permanent establishments in India. The Assessing Officer passed a draft assessment order on December 31, 2009. By order dated September 30, 2010, the Dispute Resolution Panel sustained the addition, which resulted in the final assessment order dated October 25, 2010 being passed under section 143(3) / 144C of the Act. On appeal to the High Court on the questions whether the Tribunal fell into error in holding that section 40(a)(i) of the Act, 1961 could not be applied in view of the "non-discrimination" provisions in article 24(3) of the Double Taxation Avoidance Agreement between Indian and Japan1, and article 26(3) of the Double Taxation Avoidance Agreement between India and the United States of America2, and whether the Tribunal fell in error in reversing the findings of the Dispute Resolution Panel with respect to the existence of the permanent establishments in India, there was a difference of opinion between the judges who comprised the Division Bench. The matter was referred to a third judge. The third judge held that on the facts Non-Resident had no Permanent Establishment in India-Non-

discrimination clause in Double Taxation Avoidance Agreement applicable. Disallowance is not justified. Provisions of agreement more beneficial to assessee is applicable. Order of Tribunal is affirmed. (AY. 2006-07)
CIT v. Mitsubishi Corporation India P. Ltd. (2024)463 ITR 335/337 CTR 889 / 159 taxmann.com 539 (Delhi)(HC)

672 **S. 40(a)(i) : Amounts not deductible-Deduction at source-Non-resident-Royalty-Fees for technical services-Addition deleted by Tribunal-Notice issued under section 201 is set aside. [S. 9(1)(vi),201, Art. 226]**
Assessee availed certain services from its AE and paid management fee to it's AE. Assessing Officer treated said services as technical service and made disallowance under section 40(a)(i) for non-deduction of TDS on said payment. Tribunal deleted said disallowance on ground that Assessing Officer had failed to list out highly technical services that were provided by AE to assessee and Assessing Officer failed to allude to relevant clause of agreement which demonstrated that expertise available with AE was made available to assessee. On writ, assessee had assailed not only notice under section 201 but also consequent proceedings whereby assessee's objections qua impugned notice were rejected. Court held that since Tribunal had deleted addition on merits, necessary consequence would be that both impugned notice and impugned proceedings would have to be set aside
Intertek India (P.) Ltd v. ITO (2024) 297 Taxman 55 (Delhi)(HC)

673 **S. 40(a)(i) : Amounts not deductible-Deduction at source-Non-resident-Commission payment to foreign agents-Services rendered abroad-Not liable to tax in India-Not liable to deduct tax at source. [S. 9(1)(i), 195]**
Held that commission payment to foreign agents for Services rendered abroad is not liable to tax in India hence not liable to deduct tax at source. (AY. 2010-11, 2011-12)
ITC Ltd v. ACIT (2024) 230 TTJ 921 (Kol.)(Trib)

674 **S. 40(a)(i) : Amounts not deductible-Deduction at source-Non-resident-Fes for technical services-Legal and consultancy services for registration of product in foreign country-Not fees for technical services-Not taxable in India-Not liable to deduct tax at source-DTAA-India-USA. [S. 9(1)(vii),195, Art. 12]**
Held that legal and consultancy services for registration of product in foreign country is not fees for technical services. Not taxable in India. Not liable to deduct tax at source. (AY. 2010-11)
Cadila Pharmaceuticals Ltd. v. ACIT (2024) 115 ITR 51 (SN)/ 162 taxmann.com 229 (Ahd) (Trib)

675 **S. 40(a)(i) : Amounts not deductible-Deduction at source-Non-resident-Installation and testing service-Fees for technical services-Not liable to tax in India-Not liable to deduct tax at source. [S. 9(1)(vii)(b), 195]**
Held that payment of installation and testing service paid to non-resident is not liable to tax in India hence not liable to deduct tax at source. (AY. 2015-16)
Dy. CIT v. Aspire Systems India P. Ltd (2024) 115 ITR 26 (SN) (Chennai)(Trib)

S. 40(a)(i) : Amounts not deductible-Deduction at source-Non-resident-Commission expense-Additional ground not considered-Matter remanded for de novo consideration. [S. 254(1)] 676

Held that the Commissioner (Appeals) did not consider the additional ground of appeal raised by the assessee with respect to the non-deduction of tax at source on sales commission paid in overseas jurisdiction. As a result, the matter was restored to the Assessing Officer for de novo consideration. (AY. 2009-10, 2010-11, 2011-12)

Intas Pharmaceuticals Ltd. v. ACIT (2024)114 ITR 434 (Ahd)(Trib)

S. 40(a)(i) : Amounts not deductible-Deduction at source-Non-resident –Commission-Disallowance is deleted. 677

Followed order of Tribunal in terms of the Tribunal decision on identical facts for an earlier assessment year on the same assessee, the matter regarding the addition on account of commission paid to non-residents, under section 40(a)(i) was set aside back to the Assessing Officer for verification in the context of non-resident agents and resident agents. (AY. 2012-13)

Intas Pharmaceuticals Ltd. v. ACIT (2024)114 ITR 546 (Ahd)(Trib)

S. 40(a)(i) : Amounts not deductible-Deduction at source-Non-resident-Royalty-Fees for technical services-Payments for telecommunications services to associated enterprises is not Royalty or fees for technical services-Not liable to deduct tax at source-DTAA-India-USA [S. 9(1)(vi), 9(1)(vii), 195, Art. 12] 678

Held that Payments for telecommunications services to associated enterprises is not Royalty or fees for technical services-Not liable to deduct tax at source. Followed order of earlier year which is affirmed by High Court. (AY. 2017-18)

ACIT v. Verizon Communications India P. Ltd. (2024)113 ITR 16 (SN) (Delhi)(Trib)

S. 40(a)(i) : Amounts not deductible-Deduction at source-Non-resident –Commission-Export commission to non-residents agents for services rendered outside India is not liable for withholding tax and, therefore, no disallowance could be made-7 of OECD model convention. [S. 9(1)(i) 195] 679

During years under consideration, assessee had paid commission on exports to various non-residents agents in order to promote assessee's sales in their respective country. Assessing Officer held that these payments were subject to TDS under section 195 and since no TDS had been deducted, disallowance was made under section 40(a)(i). Commissioner (Appeals) deleted addition. On appeal the Tribunal held that services were rendered outside India and payment of commission was done directly to agents abroad in foreign currency through banking channels. Nothing had been brought on record by Department that there was any business connection of agents in India, nor have services rendered been shown to be services technical in nature. Order of CIT(A) is affirmed. (AY. 2013-14, 2014-15)

DCIT v. Stylam Industries Ltd. (2024) 209 ITD 75 (Chd) (Trib.)

680 **S. 40(a)(i) : Amounts not deductible-Deduction at source-Non-resident-Fees for technical services-Sales commission-Not liable to deduct tax at source-DTAA-India-USA. [S. 195, Art. 12]**

Assessee is engaged in business of providing software support and development services and ITeS. It had paid sales commission to its US subsidiary towards selling and marketing services and had not deducted TDS on same. Assessing Officer held that said payment was towards FTS since 85 per cent of revenue of assessee was generated from exports and made disallowance of sales commission under section 40(a)(i) for reason that assessee had not deducted tax at source on said amount under section 195. CIT(A) deleted the disallowance. The Tribunal held that in assessee's own case for earlier assessment years, Tribunal held that sales and marketing services would not fall within ambit of FTS as defined under section 9(1)(vii) or under article 12 of DTAA between India and USA. There is no liability to deduct tax towards sales commission paid by assessee to its US subsidiary and, accordingly, no dis-allowance was warranted under section 40(a)(i). Order of CIT(A) is affirmed. (AY. 2016-17 to 2018-19)

DCIT v. Algonomy Software (P.) Ltd. (2024) 209 ITD 564 (Bang) (Trib.)

681 **S 40(a)(i) : Amounts not deductible-Deduction at source-Non-resident-Commission-Procurement of orders overseas-No disallowance can be made for failure to deduct tax at source. [S. 5,9(1)(vii),195]**

The Dispute Resolution Panel had also observed that the agreements with overseas agent did not signify that any quality checks of the products were carried out by foreign commission agents. Thus, in the absence of any services of technical nature, the commission payments to selling agents outside India were outside the ambit of provisions of section 9(1)(vii) read with section 5 of the Act. The property in goods was transferred in overseas jurisdiction. When the overseas agents were paid commission for securing orders, and such services were utilised for the purpose of making or earning income from a source outside India, the assessee is under no obligation to comply with provisions of section 195 of the Act for the reasons that commission paid to overseas agents was not taxable under the Act. The Assessing Officer is not justified to disallow the commission expenses under section 40(a)(i) of the Act. (AY. 2017-18)

Bhartiya International Ltd. v. Dy. CIT (2024)112 ITR 207 /227 TTJ 897 /158 taxmann.com 239 (Delhi)(Trib)

682 **S. 40(a)(i) : Amounts not deductible-Deduction at source-Non-resident-Software training services outside India-Not required to deduct tax at source-OECD Model Convention, Article 12. [S. 9(1)(vii)(b), 195]**

Assessee, Indian company, entered in Teaming agreement with non-resident entity for availing software training services outside India. It had paid certain amount of consideration for same. Assessing Officer held that amounts paid by assessee constituted royalty and was chargeable to tax in hands of assessee. Accordingly, he made an addition under section 40(a)(i) on ground of non-deduction of tax at source under section 195. On appeal the Tribunal held that since work order was issued outside India for making an income from a source outside India, amount paid being by assessee was covered under exception provided in section 9(1)(vii)(b) hence the

assessee was not required to deduct tax at source. Addition affirmed by CIT(A) is deleted. (AY. 2013-14)
QAI India Ltd. v. DCIT (2024) 208 ITD 242 (Delhi) (Trib.)

S. 40(a)(i) : Amounts not deductible-Deduction at source-Non-resident-Export commission-Sales, marketing and customer support services rendered outside India by foreign agents-Cannot be treated as Fees for technical services-Not liable to deduct tax at source-DTAA-India-Korea. [S. 9(1)(vii): Art. 13] 683
Held that export commission paid by assessee towards sales, marketing and customer support services rendered outside India by foreign agents could not be treated as Fees for technical services, therefore no disallowance under section 40(a)(i) is warranted for failure to deduct ta at source. (AY. 2017-18, 2018-19)
Western Outdoor Interactive (P.) Ltd. v. ACIT (2024) 208 ITD 608 (Mum) (Trib.)

S. 40(a)(i) : Amounts not deductible-Deduction at source-Non-resident-Services rendered out side India-Not liable to deduct tax at source-Order of CIT(A) deleting the addition is affirmed. [S. 9(1)(vii), 195] 684
Held that the contract between the assessee and AU showed that the payment made by the assessee was directly related to services rendered to customers outside India and income earned therefrom formed part of the assessee's business. Therefore, it fell under the category of services utilised for a business or profession carried on by such person outside India. The services were carried on outside India by a non-resident for offshore customers because the assessee's customers were situated outside India and services were utilised for earning income from sources outside India. Therefore, the second part of the exception under section 9(1)(vii) was also satisfied. The services were not rendered in India, the person to whom the payment was made was a non-resident and finally the amount paid was a business income of the recipient, who did not have any permanent establishment in India. Therefore, payment made to the non-resident towards services rendered in connection with installation and testing services was not chargeable to tax in India as it was covered under the exception to section 9(1)(vii). Section 195 was not attracted and the question of disallowance under section 40(a)(i) did not arise. The Assessing Officer erred in contending that there should be a permanent establishment or branch office outside India to come under the purview of the exception under section 9(1)(vii)(b), which nowhere mentioned to that effect. Therefore, payment made to a non-resident for rendering contract services outside India came under section 9(1)(vii)(b) and, thus, was not chargeable to tax in India. Hence, the assessee need not deduct tax at source under section 195 on such payment. Consequently, the payment could not be disallowed under section 40(a)(i). As a result, the Commissioner (Appeals) had rightly deleted the additions made by the Assessing Officer. (AY. 2010-11, 2012-13, 2013-14, 2016-17, 2017-18)
Dy. CIT (OSD) v. Aspire Systems India P. Ltd. (2024) 110 ITR 1 / 232 TTJ 387 (Chennai) (Trib)

685 **S. 40(a)(i) : Amounts not deductible-Deduction at source-Non-resident-Salary-Deducted TDS and deposited it in the government account within the specified time-Disallowance of salary cost is not justified. [S. 192]**

Held, that, the payments made by the branch office to the head office were reimbursements on a cost-to-cost basis without any mark-up of salary cost of the expatriate employees working in the branch office in India. The entire salary payments made to the expatriate employees in India as well as outside India have been subject to deduction of TDS u/s. 192 of the Act which fact had been corroborated by Form 16 issued to the expatriate employees. The assessee had duly filed its return of income in India in respect of its business income attributable to its branch office in India. No record was brought by the AO to show that the head office had provided any technical services to the branch office and in consequence thereof has paid fees for technical services. The expatriate employees have been working for the branch office under its complete supervision for many years and have become residents of India by virtue of their continuous stay for many years in India. Where the assessee had deducted the tax at source under section 192 of the Act and deposited it in the Government account within the specified time as prescribed under the Act, the provisions of s. 40(a)(i) of the Act were not applicable. The disallowance of salary cost reimbursement by the branch office to the head office by the AO u/s. 40(a)(i) was not justified as tax had been duly deducted at source on the entire salary payments to the expatriate employees and deposited in the Government account within the prescribed time limit. (AY. 2020-21, 2021-22)

Ayesa Ingenieria Y Arquitectura S. A. v. ACIT (IT) (2024) 111 ITR 61(SN) (Delhi)(Trib.)

686 **S. 40(a)(i): Amounts not deductible-Deduction at source-Commission-Non-resident agents-Payments were made outside India-Not having a permanent establishment in India-Not liable to deduct tax at source-Allowable as deduction-DTAA-India-France-Italy-Greece-Lebanon. [S. 37(1)]**

Held that there was no dispute that the services for which commission was paid by the assessee were rendered by non-resident agents outside India for procuring export orders from customers outside India. The payments were made outside India and the non-residents did not have any geographical or permanent establishment in India. From the terms of the agreement, it was noted that the nature of services rendered by non-resident agents was for procuring export orders of products of the assessee, and the payments made by the assessee to them were like commission which was specifically mentioned in the agreement. The Tribunal upheld the order of the Commissioner (Appeals). (AY. 2016-17)

CIT (Dy.) v. Creations by Shanagar (2024) 111 ITR 7(SN) (Mum)(Trib.)

687 **S. 40(a)(i) : Amounts not deductible-Deduction at source-Non-resident-Engaged in providing services and facilities relating to exploration and exploitation of mineral oil and natural gas Interest-Not taxable in India - DTAA-India-Singapore [S. 9(1)(1), 44BB, 195, Art. 5, 7]**

Assessee, a Singapore based company, which is engaged in providing services and facilities relating to exploration and exploitation of mineral oil and natural gas. During

year, it had taken rigs on hire as bareboat from DDPL and paid bareboat charges. It had offered income under section 44BB on presumptive basis. Tribunal held that payment made to DDPL were its business income and in absence of PE in India, assessee was not liable to deduct any tax in India under section 195 and, therefore, disallowance made under section 40(a)(i) is to be deleted. (AY. 2021-22)
Aban Singapore Pte. Ltd. v. ITO (2024) 207 ITD 143 (Chennai) (Trib.)

S. 40(a)(i) : Amounts not deductible-Deduction at source-Non-resident-Income deemed to accrue or arise in India-Fees for technical services-Shipment clearing and forwarding charges-Payment is not chargeable to tax in India-Disallowance is deleted-Article 12 of OECD Model Convention. [S. 9(1)(vi), 195] 688

Assessee-company made payment to overseas parties as shipment clearing and forwarding charges. Assessing Officer held that as per terms of contract between them, assessee was provided with information regarding tariff which would have influenced decision making process and, thus, such services fell under category of consultancy services and payments made to parties were liable for deduction of tax at source. AO invoked provisions of section 40(a)(i) and disallowed payment. Commissioner (Appeals) held that payment received by overseas parties neither fell under section 9(1) nor under section 9(1)(vii) and since income could not be described as deemed to accrue or arise in India, taxability of such amount failed and, accordingly, deleted disallowance. On appeal the Tribunal affirmed the order of the CIT(A). (AY. 2017-18, 2018-19)
ACIT v. LX Pantos India (P.) Ltd. (2024) 207 ITD 680 (Delhi) (Trib.)

S. 40(a)(i) : Amounts not deductible-Deduction at source-Advertisement, sales promotion and clinical trial –Matter is remanded to Assessing Officer to examine applicability of proviso to section 201(1) and whether in few cases TDS was required to be deducted or not. [S. 40(a)(ia), 195, 201(1)] 689

Assessee had incurred expenses on account of advertisement, sales promotion and clinical trial Assessing Officer made an disallowance under section 40(a)(i) on ground that assessee had not deducted TDS on same. CIT(A) affirmed the order of the AO. On appeal it was found that in some case, limit for TDS was less. Further, in case of advertisement expenses paid to one foreign entity, it was observed that this entity did not have any business connection or PE in India, then ostensibly same could not be subjected to TDS and, therefore, same should have removed from disallowance. Regarding these details of expenses and also whether these parties have offered it for tax, assessee had to comply with conditions provided in proviso 201(1). Therefore, entire matter of disallowance made under section 40(a)(i) was to be remanded back to Assessing Officer to examine applicability of proviso to section 201(1) and whether in few cases TDS was required to be deducted or not. (AY. 2010-11, 2011-12, 2017-18)
Isagro (Asia) Agrochemicals (P.) Ltd. v. DCIT (2024) 206 ITD 171 (Mum) (Trib.)

690 **S. 40(a)(i) : Amounts not deductible-Deduction at source-Non-resident-Royalty-Fees for technical services-Transponder fee and up linking charges-Payment was not made for right to use any industrial, commercial or scientific equipment-Payment would not fall within ambit of royalty-Not liable to deduct tax at source-DTAA-India-USA. [S. 9(1)(vi), 9(1)(vii), Art. 12]**

Held that a Mauritius based company, paid programming cost, transponder fees, and up linking charges to US based company for providing facilities of telecasting channels of assessee in India, since said payment was not made for right to use any industrial, commercial or scientific equipment, payment in question would not fall within ambit of 'royalty' as per article 12 of India-USA DTAA. The assessee is not liable to deduct tax at source. (AY. 2013-14)

Taj TV Ltd. v. DCIT IT (2024) 204 ITD 50 (Mum) (Trib.)

691 **S. 40(a)(ii) : Amounts not deductible-Rates or tax-Education cess-Not allowable as business expenditure. [S. 37(1)]**

Held that in view of the amendments in the Act education cess cannot be allowed as an expenditure. AO is directed, while giving effect to this order, to examine the amount of "education cess", if any, claimed by the assessee as an expenditure in the returns or in the proceedings. (AY. 2008-09)

JCIT v. Sesa Goa Ltd (2024) 338 CTR 377/161 taxmann.com 806 (SC)

Editorial : Sesa Goa Ltd. v. Jt. CIT (2020) 316 CTR 446/ 193 DTR 41 (Bom)(HC), is set aside.

692 **S. 40(a)(ia) : Amounts not deductible-Deduction at source-Payment made to DTC-Payee had reflected the amount in its return-High Court dismissed the appeal of the Revenue-SLP of revenue dismissed. [Art. 136]**

Assessing Officer made disallowance under section 40(a)(ia) in respect of certain payments made by assessee to DTC on which tax had not been deducted at source. Tribunal deleted the disallowance on ground that payee had reflected said amount as its tax liability in its return. High Court upheld Tribunal's order. SLP of Revenue is dismissed. Whether instant appeal against impugned order was to be dismissed.

PCIT v. Shivaai Industries (P.) Ltd. (2024) 297 Taxman 372 /470 ITR 566 (SC)

Editorial : PCIT v. Shivaai Industries (P.) Ltd. (2019) 112 taxmann.com 404 / 470 ITR 564 (Delhi)(HC)

693 **S. 40(a)(ia) : Amounts not deductible-Deduction at source-Real employer of seconded employees was Indian entity-Disallowance is not justified-SLP of revenue dismissed. [S. 192, 195, Art. 136]**

High Court held that the assessee had deducted tax at source under section 192 and section 195 had no application once the nature of payment was determined as salary and deduction had been made under section 192. The Tribunal held that the real employer of the seconded employees continued to be the Indian entity and not the overseas entity. Order of Tribunal is affirmed. SLP of revenue dismissed. (AY. 2015-16)

PCIT v. Boeing India Pvt. Ltd (2024) 297 Taxman 225 (SC)

Editorial : PCIT v. Boeing India Pvt. Ltd. (2023)457 ITR 84/146 taxmann.com 131 (Delhi)(HC)

S. 40(a)(ia) : Amounts not deductible-Deduction at source-Freight charges-Payments to contractor-Excess of Rs. 50,000 without deducting tax at source-No evidence to prove that there was no contract-High Court held that disallowance is justified-Special leave granted. [S. 194C, Art. 136] 694

The assessee is in the business of transportation. It made an aggregate payment in excess of Rs. 50,000 in a single assessment year towards freight charges to various truck owners and operators without deducting tax at source on such payments as mandated under the provisions of section 194C of the Income-tax Act, 1961. The assessing authority disallowed certain amounts and the Commissioner (Appeals) upheld the order of the Assessing Officer. The Tribunal however held that the disallowance was not justified. On appeal the High Court held that the disallowance was justified and that the Tribunal had erred in inferring that only where there was a sub-contract in writing the provisions of the Act can be invoked and in holding in favour of the assessee, when no evidence was placed before it. On a petition by the assessee SLP granted. (AY. 2005-06)

Maruti Subray Patil v. CIT (2024)461 ITR 86 /298 Taxman 2 (SC)

Editorial: CIT v. Maruti Subray Patil (2016) 383 ITR 504 (Karn)(HC)

S. 40(a)(ia): Amounts not deductible-Deduction at source-Recipient filing belated loss return and not paying taxes on income declared-Liable to pay tax deducted at source with interest. [S. 201(1)] 695

High Court dismissed the appeal holding, that when the recipient to whom the assessee had paid or credited the lease rent had filed a return belatedly and had not paid any tax due on the income declared, the assessee would be treated as an assessee-in-default for the purposes of sections 40(a)(ia) and 201(1) of the Income-tax Act, 1961 and would be liable to pay the amount of tax deducted at source with interest as also subject to the expenses being disallowed, (AY. 2007-08, 2008-09, 2009-10)

Academy of Medical Sciences v. CIT (2024)460 ITR 592/ 297 Taxman 2 (SC)

Editorial :Refer Academy of Medical Sciences v. CIT (2018) 403 ITR 74 (Ker)(HC)

S. 40(a)(ia): Amounts not deductible-Deduction at source-Fees for technical services-Insertion of explanation to Section 9 By Finance Act, 2010 with effect from 1-6-1976-No disallowance can be made-Interpretation-General principles-Principles of lex non cogit ad impossibilla, and impotentia excust legem. [S. 9(1)(vii), 195, 260A] 696

Dismissing the appeal of the Revenue the Court held that the Tribunal was right in deleting the disallowance under section 40(a)(ia) because the amendment to section 9 had not been passed at the relevant point of time and the assessee was not liable to deduct the taxes when the assessee had made the payments to non-residents towards the charges for sampling and analysis of cargo at destination port and for professional and consultancy fees. Relied on *Engineering Analysis Centre of Excellence (P) Ltd. D. CIT [2021] 432 ITR 471 (SC), (2022) 3 SCC 321*, the Supreme Court held that the two Latin maxims are applicable in all cases-lex non cogit ad impossibbilia. i.e. the law does not demand the impossible and impotentia excusat legem, i.e. when there is a disability that makes it impossible to obey the law, the alleged disobedience of the law is excused. (AY. 2010-11)

ACIT v. Sociedade De Fomento Industrial Pvt. Ltd. (2024) 471 ITR 273 (Bom.)(HC)

697 **S. 40(a)(ia) : Amounts not deductible-Deduction at source-Payments to Non-Resident-No part of income arose or accrued in India-No tax deductible at source-Deletion of disallowance is affirmed. [S. 260A]**

The Assessing Officer disallowed foreign commission payments in a sum of Rs. 5.05 lakhs under section 40(a)(ia) of the Income-tax Act, 1961 on the ground that the assessee had not deducted tax at source thereon. The Tribunal recorded that the non-resident agent of the assessee was operating at his own level and no part of the income arose or accrued in India hence the assessee was not liable to deduct tax at source. Order of Tribunal is affirmed.

PCIT v. MGM Exports (2024) 464 ITR 590 (Guj)(HC)

698 **S. 40(a)(ia): Amounts not deductible-Deduction at source-Amounts paid for services of employees of parent company-No Evidence that amount was reimbursement of actual expenditure as such services by parent company-Disallowance is affirmed.**

The assessees had submitted that the amounts were paid as reimbursement of the exact amount of salary disbursed by the companies, which did not attract the element of income; that incentive payments were made directly to such employees; and hence, no tax was deducted at source. However no evidence was produced by the assessees to prove that payments made to group companies were reimbursement of actual expenditure and there was no profit element involved in the amount representing incentive paid to the employees. The disallowance under section 40(a)(ia) was justified. The amendment restricting the disallowance to 30 per cent. of the expenditure, came into effect only from April 1, 2015 and the assessment year under consideration was 2012-13 and hence, the amendment was not applicable to the case of the assessee. Accordingly, the alternative plea raised by the assessee was rejected by the Tribunal. The view of the Tribunal was just and proper and needed no interference by the court. (AY. 2003-04 to 2014-15)

Shriram Transport Finance Co. Ltd. v. ITO (OSD) (2024)460 ITR 66 (Mad)(HC)

699 **S. 40(a)(ia): Amounts not deductible-Deduction at source-interest paid on the deposits-Co-operative bank-Finance Act, 2015 w. e. f. 1st June, 2015-Amendment is applicable prospectively w. e. f. 1st June, 2015 and not applicable for the relevant years-Deletion of disallowance is affirmed. [S. 194A(3))(v)**

Held that the amendment of S. 194A(3)(v) made by the Finance Act, 2015, whereby exemption from deduction of TDS has been withdrawn in the case of co-operative banks is applicable prospectively w. e. f. 1st June, 2015 and, therefore, interest paid by the assessee-bank on time deposits without deduction of TDS prior to said date could not be disallowed under s. 40(a)(ia). Order of CIT(A) is affirmed. (AY. 2014-15, 2015-16, 2017-18)

ITO v. Mayurbhanj Central Cooperative Bank Ltd. (2024) 230 TTJ 655 / 240 DTR 17 (Cuttack)(Trib)

S. 40(a)(ia): Amounts not deductible-Deduction at source-Short deduction of TDS-No disallowance can be made-Action can be taken under section 201. [S. 194C, 194J] 700
Held that when there is short deduction of TDS, no disallowance under s. 40(a)(ia) can be made and the correct course of action would be to invoke the provisions of s. 201. (AY. 2012-13)
ACIT v. Vizag Seaport (P) Ltd. (2024) 229 TTJ 73 (UO) (Visakha) (Trib)

S. 40(a)(ia): Amounts not deductible-Deduction at source-Amendment made by Finance (No. 2) Act, 2014-Matter remanded to the Assessing Officer. 701
Held that Circular No. 1 of 2015, dt. 21st Jan., 2015 has clarified that the amendment made by the Finance (No. 2) Act, 2014 to the provisions of s. 40(a)(ia) is effective from 1st April, 2015 and will, accordingly, apply in relation to the AY. 2015-16 and subsequent years. AO is directed to apply the amended provision while computing disallowance under s. 40(a)(ia). (AY-2009-10 to 2015-16)
Royal Twinkle Star Club (P) Ltd. v. DCIT (2023) 152 taxmann.com 374 / (2024) 228 TTJ 991 (Mum) (Trib)

S. 40(a)(ia): Amounts not deductible-Deduction at source-Payment of legal professional fees-Additional evidence is filed before the ITAT-Matter remanded. [S. 9(1)(vii)] 702
Held that since all details were furnished before the Tribunal, and not before the lower authorities, and since it was imperative to first determine the nature of the expenses before deciding the taxability in the source and residence country, the issue is sent back to the Assessing Officer to cull out all relevant facts relating to the expenses and adjudicate the matter of its taxability in India (AY. 2008-09, 2009-10)
Cadila Pharmaceuticals Ltd. v. ACIT (2024)115 ITR 428/ 162 taxmann.com 229 (Ahd)(Trib)

S. 40(a)(ia): Amounts not deductible-Deduction at source-Payments to contractors and professional or technical service fee-Deducted lower rate of tax-Disallowance is not justified. [S. 194C, 194J] 703
Held that merely because the tax was deducted at lower rate, no disallowance can be made. Order of CIT(A) is affirmed. (AY. 2017-18
ACIT v. First Advantage P. Ltd. (2024)114 ITR 45 (SN)(Mum)(Trib)

S. 40(a)(ia): Amounts not deductible-Deduction at source-Mobilisation advance-Joint venture-Issue restored to Assessing Officer for verification. 704
Tribunal held that the issue needed factual verification, it was restored to the Assessing Officer to determine that the assessee had duly deducted tax and paid it to the coffers of the Central Government on the impugned sum claimed as expenditure during the year and that the expenses were of revenue nature and relatable to the year in question. The Assessing Officer is directed to pass a speaking order in accordance with law. (AY. 2014-15)
Punj Lloyd Alcon Lk Goyal (JV) v. ITO (2024)114 ITR 36 (SN)(Delhi)(Trib)

705 **S. 40(a)(ia): Amounts not deductible-Deduction at source-Remittances to foreign university of fees collected from students for conduct of examinations-No disallowance can be made-DTAA India-UK [S. 9(1), Expl 2,195 Art. 13(5)(c)]**
Held that that the examination fee paid by the assessee to the University of Cambridge did not fall under the definition of fees for technical services as defined under Explanation 2 to section 9(1) of the Act and article 13(5)(c) of the Double Taxation Avoidance Agreement between India and the United Kingdom and therefore not taxable in the hand of recipient in India. The disallowance is deleted. (AY. 2012-13)
Gecom International P. Ltd. v. Dy. CIT (2024)113 ITR 22 (SN)(Delhi)(Trib)

706 **S. 40(a)(ia): Amounts not deductible-Deduction at source-Interest-Payment of deposits-Disallowance of 30 per cent of interest-Deductees have already filed return and paid tax-Matter remanded. [S. 194A, 197, Form 15 G, 15H]**
Held that in most of the cases, the deductees had already filed returns of income and paid Income-tax on interest payment made by the assessee-bank. This also needed to be verified by the Assessing Officer, with necessary evidence. The order of the Commissioner (Appeals) was set aside and the issue restored to the Assessing Officer with a direction to re-examine the claim of the assessee, in light of evidence that may be placed by the assessee before the Assessing Officer to prove their case. (AY. 2015-16 to 2017-18)
City Union Bank Ltd. v. Dy. CIT (2024)112 ITR 337 /229 TTJ 139 (Chennai)(Trib)

707 **S. 40(a)(ia): Amounts not deductible-Deduction at source-Making Provision for expenses at end of accounting year-No tax deducted at source-Deducting tax at source in subsequent year and depositing it before due date for filing of return of income. [S. 139(1)]**
Held, that admittedly, the assessee had reversed the provision on the first day of the next previous year. As the payer and the payee were identified, the nature of services was also ascertained and the amount of liability determined, there was no reason why the tax should not have been deducted thereon. Only in those circumstances provisions of section 40(a)(ia) of the Act would apply. However, if the assessee paid such tax on or before the due date specified under section 139(1) of the Act, no disallowance could be made. Even if it was accepted that tax should have been deducted, the assessee has subsequently deposited the impugned amount of tax deducted on or before the due date under section 139(1) of the Act for the year in which provision was made. As the assessee had complied with that condition, for different reasons, the addition could not be sustained. (AY. 2014-15)
ACIT v. NRB Bearings Ltd. (2024)112 ITR 17 (SN)(Mum) (Trib)

708 **S. 40(a)(ia): Amounts not deductible-Deduction at source-Cash credits-Service tax out standing-Additional evidence is admitted-Matter is remanded for fresh adjudication. [S. 43B, 68, 145A(ii), Form No 26A]**
Held that second proviso to Section 40(ia) and Form 26A brought as additional evidence. Cash credits, additional evidence filed. Service tax outstanding. Assessee following exclusive method of accounting and Service tax was not routed through profit and loss

account. Provisions of Section 145A(ii) mandate assessee to follow inclusive method of Accounting. Matter remanded to Assessing Officer for fresh adjudication. (AY. 2018-19)
Casa Grande Civil Engineering P. Ltd. v. Jt. CIT (OSD) (2024)110 ITR 65 (SN)(Chennai) (Trib)

S. 40(a)(ia): Amounts not deductible-Deduction at source-Only interest and not principal-Form No 26A filed-Delay is condoned-Matter remanded. [S. 194A, 201(1)] 709
Held that the Assessing Officer had made an addition of Rs. 17,20,760 which included the principal amount and interest. The provisions of section 40(a)(ia) of the Act provided for disallowance only of the interest and not the principal. Therefore, the principal amount could not be subjected to disallowance and the Assessing Officer was to allow this sum. As regards the balance amount in terms of section 201(1), if the assessee filed the correct form 26A within 60 days from the receipt of the order the Assessing Officer may allow the claim of the assessee in accordance with law condoning the delay in filing form 26A. (AY. 2014-15)
Kamal Industries v. ITO (2024)111 ITR 32 (SN)(Jodhpur) (Trib)

S. 40(a)(ia): Amounts not deductible-Deduction at source-Shortfall in deduction of tax at source-Disallowance is deleted-Proper course of action was proceeding under section 201[S. 201] 710
Held, that for cases of short deduction of tax at source the correct course of action is proceeding under section 201 of the Act, the disallowance under section 40(a)(ia) is deleted. Followed, *PCIT v. Future First Info Services P. Ltd. (2022) 447 ITR 299 (Delhi) (HC)* (AY. 2007-08, 2008-09)
Joshi Technologies International Inc. v. Asst. CIT (IT) (2024)109 ITR 70 (Ahd)(Trib)

S. 40(a)(ia): Amounts not deductible-Deduction at source-Services rendered by parties-Bills were raised in next year-Payees were not identifiable-Voluntarily disallowed of expenses would not automatically enable Assessing Officer to treat it as assessee in default-Cannot be treated as assessee in default. [S. 201(1), 201(IA)] 711
Held that once there is a categorical finding that the assessee had not credited the corresponding liability for expenses to the account of the concerned vendors who had rendered the services, the payees become non-identifiable and hence there was no question of applicability of provisions requiring tax deduction at source thereon. Merely because the assessee had voluntarily disallowed the expenses under section 40(a)(ia) of the Act in the return, they would not automatically enable the Assessing Officer to treat it as assessee in default under section 201(1) of the Act and consequentially levy interest under section 201(1A) of the Act. The provisions of section 40(a)(ia) and section 201(1) and (1A) of the Act are mutually exclusive. In any case, there was no estoppel against the statute. The assessee could not be treated as assessee in default under section 201(1) of the Act and no interest was chargeable under section 201(1A) of the Act. (AY. 2012-13)
Asst. CIT (TDS) v. Artemis Medicares Services Ltd. (2024)109 ITR 84 (SN)/ 159 taxmann. com 1368 (Delhi) (Trib)

712 **S. 40(a)(ia): Amounts not deductible-Deduction at source-Merchant agreement-Booking of hotel rooms through platform-Contractors-Sub contractors-Minimum guarantee payments to hotels-Not liable to deduct tax at source. [S. 194C, 194J]**

Assessee entered into merchant agreement with various hotels for facilitating reservation/ booking of hotel rooms through platform of assessee. Assessee assured minimum benchmarks/occupancy of hotel and in case such benchmark was exceeded then service fee was payable by hotel and in case of shortfall assessee was required to meet same. Assessee filed its return of income declaring loss of Rs. 30 crores. During scrutiny assessment, addition of Rs. 1.09 crores was made under section 40(a)(ia) for non-deduction of tax at source either under section 194-I or 194C on minimum guarantee expense of Rs. 3.62 crores. Commissioner(Appeals) held that such payments were not rent, however, upheld disallowance for non-deduction of tax under section 194C. Tribunal held that provisions of section 194C provide that any person responsible for paying any sum to any resident for carrying out any work in pursuance of a contract between contractor and a specified person shall deduct tax on sum paid or credited to account of contractor, sine qua non for applicability of this provision is carrying out any work. However, since assessee is merely compensating shortfall pursuant to agreement and no work had been carried out, assessee would not be liable for TDS under section 194C on minimum guarantee payments made to hotels. (AY. 2015-16)

Oravel Stays (P.) Ltd. v. ACIT (2024) 206 ITD 74 (Delhi) (Trib.)

713 **S. 40(a)(ii) : Amounts not deductible-Rates or tax-Education cess-Not an allowable deduction.**

Held that education cess was not an allowable deduction.. (AY. 2010-11)

Tech Mahindra Business Services Ltd. v. ACIT (2024) 112 ITR 21 (SN)(Mum)(Trib)

714 **S. 40(a)(ii) : Amounts not deductible-Rates or tax-Payment to American Bank for listing shares in Luxembourg Exchange-Fees for technical services-Provisions of Double Taxation Avoidance Agreement is not considered-Matter remanded to the Assessing Officer. [S. 9((1)(vii)]**

Held that the provisions of section 9(1)(vii) of the Act were examined by the Commissioner (Appeals) in respect of payment to the American bank, but not the provisions of the Double Taxation Avoidance Agreement. Therefore, the addition on account of technical services provided to the assessee was to be re-examined by the Assessing Officer in the light of the provisions of the Double Taxation Avoidance Agreement after giving the assessee a reasonable opportunity of being heard. (AY. 2012-13)

Indowind Energy Ltd. v. Dy. CIT (2024) 109 ITR 68 (SN)(Chennai)(Trib)

715 **S. 40A(2) : Expenses or payments not deductible-Excessive or unreasonable-Matter remanded back to the Assessing Officer. [S. 37(1), 40A(2)(a), Art. 136]**

Assessee, a co-operative sugar factory, purchased sugarcane at a price higher than Statutory Minimum Price (SMP) set by Central Government, based on State Advised Price (SAP). Assessing Officer disallowed excess amount and Khodki charges, citing profit diversion under section 40A(2)(a). Tribunal held that section 40A(2)(a) did not apply to co-operative societies, additional payments over SMP were allowable under

section 37(1). High Court held that issue raised in this appeal was covered by Judgment of this Court in case of *CIT v. Manjara Shetkari Sahakari Sakhar Karkhana Ltd. [2008] 166 Taxman 287/301 ITR 191.* Against said order revenue filed instant appeal-Supreme Court in *CIT v. Tasgaon Taluka S. S. K. Ltd. [2019] 103 taxmann.com 57/262 Taxman 176* held that entire/whole amount of difference between Statutory Minimum Price (SMP) and Additional Price (SAP) fixed for sugarcane cannot be said to be an appropriation of profit and only component of profit worked out while determining final price can be said to be an appropriation of profit and rest of amount is to be considered as deductible expenditure. In view of decision of Supreme Court in case of Tasgaon Taluka S. S. K. Ltd. (supra), orders passed by High Court and lower authorities were set aside and quashed and matters were remitted to respective Assessing Officers to decide issue afresh. Matter remanded back.

CIT v. Shree Chhatrapati Sahakari Sakhar Karkhana Ltd. (2024) 299 Taxman 450 /338 CTR 378 (SC)

Editorial: CIT v. Shree Chhatrapati Sahakari Sakhar Karkhana Ltd (2011) 10 taxmann.com 609 (Bom)(HC)

S. 40A(2) : Expenses or payments not deductible-Excessive or unreasonable-Burden of proof on Revenue to show that expenditure was Excessive-The Assessing Officer is duty-bound to provide an opportunity to the assessee to place on record the requisite evidence to justify its claim Matter remanded to the file of the Assessing Officer-Directed to issue fresh notice and decide in accordance with law. [S. 40A(2)(a)), 40A(2)(b), 260A] 716

On appeal the Court held that the Assessing Officer is duty-bound to provide an opportunity to the assessee to place on record the requisite evidence to justify its claim. The matter was remanded since AO did not seek the relevant evidence and simply rejected the claim made by the assessee. (AY. 2011-12, 2012-13)

Mehra Jewel Palace (P.) Ltd. v. PCIT (2024) 460 ITR 209/ 296 Taxman 489 (Delhi)(HC)

S. 40A(2): Expenses or payments not deductible-Excessive or unreasonable-Relative of partner-Service rendered is not doubted-No disallowance cannot be made. [S. 37(1)] 717

Held that the service rendered is not doubted and the salary was paid as per the present market rate. Disallowance is deleted. (AY. 2015-16)

M. S. Hostel v. Dy. CIT (2024) 230 TTJ 575 / 167 taxmann.com 735 (Ahd) (Trib)

S. 40A(2): Expenses or payments not deductible-Excessive or unreasonable-Service charges paid to group company-Common management services-Disallowance is deleted. 718

Held that BL had not charged any mark-up and was assessed at nil on the principle of mutuality. If the services had been availed of in the relevant assessment year, the charges paid to BL would be allowable. The assessee not only received sundry managerial services from BL but also furnished, by way of additional evidence, sample evidence of receipt of such services. Similar evidence was filed in the earlier assessment year, which was accepted by the first appellate authority, who allowed the deduction. Thus, payment made to BL for rendering service could not be disallowed in terms of section 40A(2). (AY. 2003-04)

Hindalco Industries Ltd. v. Dy. CIT (2024)114 ITR 502 (Mum)(Trib)

719 **S. 40A(2): Expenses or payments not deductible-Excessive or unreasonable-Payment to related parties-Deletion is justified. [S. 40A(2)(b)]**
Held that the Commissioner (Appeals) had correctly observed that not only was the Assessing Officer not justified in adopting a lump sum rate of 2. 5 per cent. on payments made to related parties being excessive, as there was no basis or rationale to arrive at such an ad hoc percentage for making disallowance under section 40A(2)(b), but also that the Assessing Officer had not given any specific comparable instance to show that payment made to those parties was not reasonable or not according to prevalent fair market value. The order of the Commissioner (Appeals) in deleting the disallowance was upheld. (AY. 2009-10, 2010-11, 2011-12)
Intas Pharmaceuticals Ltd. v. ACIT (2024)114 ITR 434 (Ahd)(Trib)

720 **S. 40A(2): Expenses or payments not deductible-Excessive or unreasonable-Royalty-Disallowance at rate of 0. 2 percent of turnover is deleted-25% of other fees on ad-hoc basis-Order of CIT (A) directing Assessing Officer to allow payments after verifying and comparing similar payments made to other group companies is affirmed.**
Tribunal following the order of Tribunal in assessee's own case for subsequent year qua payment of royalty at rate of 0. 5 per cent of turnover, disallowance of royalty made by Assessing Officer was to be deleted. As regards payment of consultancy and professional charges was concerned, Commissioner (Appeals) was justified in directing Assessing Officer to allow payments after verifying and comparing similar payments made to other group companies. (AY. 2005-06)
Piramal Enterprises Ltd. v. DCIT (2024) 205 ITD 636 /116 ITR 261 (Mum) (Trib.)

721 **S. 40A(2): Expenses or payments not deductible-Excessive or unreasonable-Salaries paid to director cannot be disallowed on the ground that salaries paid in earlier year was less than the relevant year – Burden is on revenue to demonstrate that the remuneration is excessive as per market rate-Disallowance is deleted.**
Held that Salaries paid to director cannot be disallowed on the ground that salaries paid in earlier year was less than the relevant year. The AO could not bring any material to demonstrate that the remuneration is excessive as per market rates. Disallowance is deleted. (AY. 2018-19)(ITA No. 1369/ Chny/ 2023 dt. 10-6-2024)
Egberts India Pvt Ltd (2024) Chamber's Journal-July-P. 123 (Chennai)(Trib)

722 **S. 40A(3) : Expenses or payments not deductible-Cash payments exceeding prescribed limits- SLP of Revenue is dismissed on account of delay in filing the petition. [Art. 136]**
Assessing Officer invoked section 40A(3) on ground that assessee purchased stock-in-trade other than by account payee cheque or bank draft. Tribunal held that word 'payment' was to be read in conjunction with expression 'in a sum exceeding 20,000 rupees as contained in section 40A(3) and when an expenditure was incurred for which payment was not made in cash or monetary terms, provisions of section 40A(3) would have no application. High Court held that Tribunal was justified in holding that provision of section 40A(3) could not be invoked.

SLP of Revenue is dismissed on the ground that there was gross delay of 521 days in filing this special leave petition and since explanation offered was not sufficient in law so as to condone delay. (AY. 2007-08)
CIT v. Bhartiya Hotels (P.) Ltd. (2024) 299 Taxman 510 / 465 ITR 230 (SC)
Editorial: CIT v. Bhartiya Hotels (P.) Ltd(2022) 143 taxmann.com 70 (2024)465 ITR 227 (Cal)(HC)

S. 40A(3) :Expenses or payments not deductible-Cash payments exceeding prescribed limits-Payment to supervisors-Disbursement to workers-Payment made by the supervisors had not exceeded Rs. 20,000 to any individual labour-Disallowance is directed to be deleted. [S. 260A, R. 66DD(i), Indian Contract Act, S. 182, 185, 186, 188, 211] 723

Allowing the appeal of the assessee the Court the Assessing Officer has nowhere disputed the stand of the assessee supported by books of account that the supervisors are employees of the assessee. Tribunal recorded a finding based on surmise and presumption that the supervisors are nothing but sub-contractors of the assessee. Assessee withdrew amount from his bank account through his employees i. e., supervisors for disbursement to individual labourers and the supervisors gave an account of the money so received for payment to labourers. Thus, the assessee is principal and supervisors acted as agent of assessee. Payment made by the supervisors had not exceeded Rs. 20,000 to any individual labour. In view of the circumstances prescribed in the second proviso to S. 40A(3) r/w r. 6DD(l), disallowance was not sustainable. (AY. 2006-07)
SK. Jaynal Abddin v. CIT (2024) 339 CTR 120 /161 taxmann.com 640(Cal) (HC)

S. 40A(3) : Expenses or payments not deductible-Cash payments exceeding prescribed limits-Purchases of amount exceeding Rs. 20, 000, on a single day-Failure to produce bills-Disallowance made by Assessing Officer of 20 per cent of cash payments is affirmed. [R. 6DD, 260A] 724

The assessee is a government contractor, cash book of the assessee showed that during year he made cash payments exceeding Rs. 20,000 on a single day for material purchased. Assessee contended before Assessing Officer that though cash book showed payments exceeding Rs. 20,000 in cash on a single day for material purchased, day book clearly bifurcated same based on truck loads of material received, which indicated payment having been made individually to truck drivers and none of which single payment exceeded Rs. 20,000. Assessing Officer held that no substantiating bills or vouchers had been produced by hence disallowed 20 per cent of cash payments by invoking provisions of section 40A(3). Tribunal affirmed the order of the Assessing Officer. On appeal the Court held that since assessee had not shown as to whether supplies were sourced from different persons and had not produced any supporting bills or vouchers, which lead to only a reasonable inference that amounts were paid to supplier in lump sum for material delivered on a single day. Order of Tribunal is affirmed. (AY. 2004-05)
Mahendra Prasad Singh v. CIT (2024)160 taxmann.com 233 /336 CTR 118 (Patna) (HC)

725 **S. 40A(3) : Expenses or payments not deductible-Cash payments exceeding prescribed limits-No payments for purchase of shares made in cash-Disallowance is not attracted. [S. 255(4), 260A]**

The Commissioner (Appeals) considered the nature of transaction and held that the Assessing Officer was not justified in considering the property in question to be stock-in-trade and held that section 40A(3) was not attracted. On appeal by the Department before the Tribunal, there was a difference of opinion between the Members who heard the appeal. Consequently, the President of the Tribunal in his power under section 255(4) referred the matter to the Third Member who affirmed the findings of the Commissioner (Appeals) holding that when an expenditure was incurred for which payment was not made in cash or monetary terms, the provisions would have no application. On appeal dismissing the appeal of the Revenue the Court held that the Department did not state that any cash transaction took place. There was no perversity in the order passed by the Third Member of the Tribunal in agreement with the Accountant Member that the provisions of section 40A(3) were not applicable. (AY. 2007-08)

CIT v. Bhartiya Hotels Ltd. [2022] 143 taxmann.com 70 (2024) 465 ITR 227 (Cal)(HC)

Editorial : SLP of revenue dismissed, on account of delay in filing the petition, CIT v. Bhartiya Hotels Ltd(2024) 299 Taxman 510/ 465 ITR 230 (SC)

726 **S. 40A(3) : Expenses or payments not deductible-Cash payments exceeding prescribed limits-Genuineness of transaction was in doubt-Order of Tribunal is affirmed. [R. 6DD(j)]**

Appeal of the assessee dismissed by the Delhi High Court and disallowance u/s. 40A(3) of the Act upheld as the assessee had made purchases in cash and could not substantiate the genuineness of the transaction. Assessee made payment of purchases through bearer cheques to 3 suppliers and filed confirmations from suppliers which were undated and were bearing identical language. As a matter of fact, Tribunal noted that this brought genuineness of the transaction into serious doubt. High Court observed that even though the assessee was a new entrant in the business, as it was mentioned in the confirmations obtained from the suppliers, assessee could have made payment to allay concerns through bank drafts or through other banking channel. Assessee relied on CBDT Circular No. 220 dated 31.05.1977 and submitted that case of the assessee falls under Rule 6DD(j). High Court held that from AY 2009-10, Rule 6DD has been substituted vide Notification No. 97/2008 dated 10.10.2008. Even claim was not allowable as per CBDT Circular 220 dated 31.05.1977, as the assessee could not substantiate the genuineness of the transaction, which is required as per said CBDT Circular. High Court upheld the view of the Tribunal. (AY. 2013-14)

Rajesh Kumar v. CIT (2024) 296 Taxman 540 /463 ITR 320 (Delhi)(HC)

Editorial : SLP filed by assessee is dismissed, Rajesh Kumar v. CIT (2024) 298 Taxman 753 / 463 ITR 328 (SC)

S. 40A(3) :Expenses or payments not deductible-Cash payments exceeding prescribed limits –Failure to produce the evidence to demonstrate that each bill is less than Rs. 20,000-Addition is affirmed. 727

Held that the assessee failed to produce the evidence to demonstrate that each bill is less than Rs. 20,000. Addition is affirmed. (AY. 2012-13)

Aman Exports International v. Dy. CIT (2024) 228 TTJ 26 (UO) (Jaipur)(Trib)

S. 40A(3) : Expenses or payments not deductible-Cash payments exceeding prescribed limits-The tax authorities are not justified in invoking the provisions of S.. 40A(3) of the Act without verifying the relevant facts. 728

Assessee is mainly engaged in the machinery import and sales, besides undertaking AMC works. Payments have been made towards service charges and the payment made on one occasion did not exceed the prescribed limit of Rs. 20,000/-applicable to the year under consideration. Assessee has furnished all the vouchers to the tax authorities. The tax authorities are not justified in invoking the provisions of S. 40A(3) of the Act without verifying the relevant facts. (ITA No. 3552/M/2023, 08/03/2024) (AY. 2014-15)

Avinash Kumar Ojha v. ITO (Mum.) (Trib.)(UR)

S. 40A(3) :Expenses or payments not deductible-Cash payments exceeding prescribed limits-Transporters-Each payment was less than Rs 35000/-Matter remanded. 729

Held that the assessee claimed that out of payment of Rs. 72,450 paid to various transporters each payment was less than Rs. 35,000 paid to more than single person on various dates and therefore, the matter was remanded to the Assessing Officer to consider the claim of the assessee. (AY. 2014-15)

Kamal Industries v. ITO (2024)111 ITR 32 (SN)(Jodhpur) (Trib)

S. 40A(3) :Expenses or payments not deductible-Cash payments exceeding prescribed limits-Purchase of sweets-Disallowance of 20 Per Cent. of payment is justified. [R. 6D] 730

Held that since the assessee had not been able to adduce any evidence whatsoever with respect to incurring of the expenditure in cash towards purchase of sweets, there was no infirmity in the order of the Dispute Resolution Panel. (AY. 2007-08, 2008-09)

Joshi Technologies International Inc. v. Asst. CIT (IT) (2024)109 ITR 70 (Ahd)(Trib)

S. 40A(3) : Expenses or payments not deductible-Cash payments exceeding prescribed limits-Wholesale trading of raw meat and animal wastes-Cash purchases below Rs. 20,000 each-Vendors lacking bank accounts and purchases being from remote areas-Disallowance is deleted. [R. 6DD(e) (ii)] 731

The assessee, engaged in wholesale trading of raw meat and animal wastes purchased cash purchases were below Rs. 20,000/-each. The AO disallowed the expenses, which is affirmed by CIT(A). On appeal the Tribunal held that payment is covered under rule 6DD(e)(ii), as vendors lacked bank accounts and purchases were from remote areas. Accordingly deleted the disallowances. (AY. 2012-13)

Gyasuddin Qureshi v. ITO (2024) 206 ITD 156 (Delhi) (Trib.)

732 **S. 40A(3) : Expenses or payments not deductible-Cash payments exceeding prescribed limits-Rent for four godowns in cash-Less than Rs 10,000 per day per person-No disallowance can be made-Matter remanded for verification-Electricity charges in cash to a State Government undertaking-Covered by exception carved out in rule 6DD(b)-No disallowance can be made. [R. 6DD(b)]**

Assessee paid rent of four godowns in cash. Assessing Officer disallowed said payment under section 40A(3). CIT(A) up held the order of the Assessing Officer. Before the Tribunal the assessee submitted that respective payments made towards rent of four godowns were lower than Rs. 10,000 each, therefore, no disallowance of same could have been made in absence of violation of mandate of section 40A(3). Matter is remanded back to Assessing Officer for verification. Assessee paid electricity charges in cash to a State Government undertaking-Assessing Officer disallowed same under section 40A(3) which was affirmed by the CIT(A). Tribunal held that since payment to Government undertaking was in legal tender, same would be covered by exception carved out in rule 6DD(b) and, thus, same would not be disallowed under section 40A(3) of the Act. (AY. 2018-19)

Shubh Karan Mahnot v. ITO (2024) 205 ITD 246 (Raipur)(Trib)

733 **S. 40A(7) : Expenses or payments not deductible-Gratuity –Fund maintained by LIC-Pendency of application-Matter is remanded to the file of AO for verification. [S. 36(1)(vi)]**

Tribunal held that in the absence of material on record to ascertain the facts the matter is remanded to the file of the AO. If application is pending, provision made for gratuity is directed to be allowed. (AY. 2014-15, 2015-16, 2017-18)

ITO v. Mayurbhanj Central Cooperative Bank Ltd. (2024) 230 TTJ 655 / 240 DTR 17 (Cuttack)(Trib)

734 **S. 40A(9) : Expenses or payments not deductible-Bonus to employees-Business expenditure-Contribution to employees welfare trust-Community services-Payments under a Memorandum of Settlement with the trade union-Expenditure not covered by Section 30 to Section 36, and expenditure made for purposes of business shall be allowed as business expenditure. [S. 37(1), 30 to 36]**

The payments were envisaged under a Memorandum of Settlement dated 31st March, 1986 between the Respondent-Assessee and the trade union, namely, TELCO-Workers' Union, Jamshedpur ("Workmen's Union") of the workers employed by the Respondent-Assessee. The Hon. Court held that Section 40A(9) has no application to the facts of the case. The Tribunal was justified in law in deleting the disallowance made by the Assessing Officer. Further the payments made in the facts of this case were not payments required to be made under the Industrial Disputes Act or payment required by or under any other law, but the same is irrelevant for the matter at hand since Section 40A(9) was not at all attracted. Unless it was attracted, there was no necessity to rely on the exception in that section in relation to payments required to be made or under any law. (AY. 1987-88 and 1988-89)

CIT v. Tata Engineering & Locomotive Company Ltd. [2024] 165 taxmann.com 227 (Bom)(HC)

S. 41(1) : Profits chargeable to tax-Remission or cessation of trading liability-No evidence of cessation of Liability-Order of ITAT is affirmed by High Court-SLP of revenue dismissed on account of delay of 450 days and also on merit. [Art. 136] 735

Dismissing the appeal of the Revenue the High Court held that the creditors had given a written reply in response to the summons reiterating their liability as also the fact that the assessee had settled some of the creditors even after March 31, 2001. The duty on the AO is to prove that the liability has ceased to exist which he had failed to do. SLP of Revenue is dismissed on account of delay of 450 days and also on merit. (AY. 2001-02)

PCIT v. Soorajmull Nagarmull (2024) 466 ITR 248/ 164 taxmann.com 353/ 300 Taxman 84 (SC)

Editorial: PCIT v. Soorajmull Nagarmull (2022) 145 taxmann.com 245 (2023)457 ITR 470/ 335 CTR 832/ 226 DTR 265 (Cal)(HC)

S. 41(1) : Profits chargeable to tax-Remission or cessation of trading liability-Advance from a party against project to be carried out Project could not be implemented and amount is not returned due to financial constraints-Never received any benefit or enjoyed money that it had received as an advance, provisions of section 41(1) would not be applicable. [S. 28(iv)] 736

Assessee received certain amount as advance from 'M' against project to be carried out during year 2001-02 but said project could not be implemented. However, amount was not returned by assessee due to financial constraints Assessing Officer invoked provisions of section 41(1) on ground that there was cessation of liability as same had ceased to exist and that assessee had reinvested amount received as advance in shares of group companies of 'M' which was later on sold at loss and such capital loss was never claimed as set-off by assessee. He further invoked provisions of section 28(iv) to add aforesaid amount as income of assessee. Tribunal deleted the addition. On appeal the Court held that the assessee never received any benefit or enjoyed money that it had received as an advance and, therefore, no benefit was derived out of said transactions as admitted by Assessing Officer in assessment order. Finding of fact provisions of section 41(1) read with section 28(iv) would not be applicable. (AY. 2012-13)

PCIT v. Ideal Data Electronic Application Ltd. (2024) 341 CTR 1048 / 168 taxmann.com 189 (Guj) (HC)

S. 41(1) : Profits chargeable to tax-Remission or cessation of trading liability-Deletion of addition on facts-No substantial question of law. [S. 37(1), 143(3), 260A] 737

Dismissing the appeal the Court held that from the facts it was clear that the additions under section 41(1) were made for the differences which arose only on account of book entries. Admittedly, the assessee had actually made the payment in a later year and the party had accounted receipt in the same financial year which resulted in the differences in the balance as added by the Assessing Officer. Since the difference had been explained and was only on account of the book entries, the Tribunal was right in deleting the addition to income. No question of law arose from its order. (AY. 2012-13)

PCIT v. Aditya Coke Pvt. Ltd. (2024)460 ITR 734 (Guj)(HC)

738 **S. 41(1) : Profits chargeable to tax-Remission or cessation of trading liability-Goods purchased from brother-Writing off dues as personal help-Liability ceasing to exist on written off by creditor in his books-Addition is justified.**
Held that when the person from whom the amount was borrowed, had written off the amount in his accounts, the liability ceased to exist. As there is cessation of liability, the same could not be part of the assessee's sundry creditors. Therefore, the addition made under section 41(1) as cessation of liability is justified. AY. 2014-15)
Maideen Pitchai Rawther Peer Mohammed v. ACIT (2024)116 ITR 71 (SN)(Chennai)(Trib)

739 **S. 41(1) : Profits chargeable to tax-Remission or cessation of trading liability-Sundry creditors-Summons issued through Inspector is unserved-No party existing at address provided-Confirmation filed-Amounts shown as outstanding in the balance sheet-Addition is deleted. [S. 133(6)]**
The assessee had filed confirmations from all three sundry creditors, which had been acknowledged by the Assessing Officer in his assessment order. The assessee had discharged its primary onus. Addition is deleted. (AY. 2015-16)
Golden Moment P. Ltd. v. ACIT (2024) 115 ITR 87 (SN)/(2025) 210 ITD 484 (Delhi)(Trib)

740 **S. 41(1) : Profits chargeable to tax-Remission or cessation of trading liability-Excess cash, stale drafts and branch suspense account-Transferred to depositors' education and awareness fund-Cannot be treated as income-Deletion of addition is affirmed. [S. 28 (iv)]**
Held, that excess cash, stale drafts and branch suspense account could not be treated as income of the assessee, because according to the Reserve Bank of India guidelines the amount should be transferred to the Depositors Education and Awareness Fund. The findings of the Commissioner (Appeals) deleting the addition is affirmed. (AY. 2015-16 to 2017-18)
City Union Bank Ltd. v. Dy. CIT (2024)112 ITR 337 /229 TTJ 139 (Chennai)(Trib)

741 **S. 41(1) : Profits chargeable to tax-Remission or cessation of trading liability-Outstanding more than three years-Addition cannot be made-Order of CIT(A) is affirmed.**
Assessing Officer held that trading liability from which benefit arose to assessee was outstanding for more than 3 years and therefore, he added same to total income of assessee under provisions of section 41(1). CIT(A) deleted the addition. On appeal the Tribunal held that since assessee had continued to show liability in books of account as payable and there was no material on record which could suggest that parties had waived off right to recover such outstanding amount from assessee, addition made by Assessing Officer was rightly deleted by Commissioner (Appeals). (AY. 2013-14)
DCIT v. Adani Mining (P.) Ltd. (2024) 204 ITD 269 (Ahd) (Trib.)

742 **S. 42 : Business for prospecting-Mineral oil-Production Sharing Contracts with Government of India-Commissioner (Appeals) is justified in directing Assessing Officer to allow entire expenses claimed in C Block and K Block. [S. 37(1)]**
Held that for the purposes of section 42, the terms of the agreement shall prevail for allowing deduction of expenses specified in the agreement. The option to claim expenses incurred prior to the date of commercial production in ten instalments was

available only in K block, and not in the C block. According to the production sharing contracts in the C block, expenditure incurred prior to the commercial production shall be aggregated and the loss so assessed as well as loss, if any, incurred in the assessment year relevant to the year in which commercial production commences or in any subsequent assessment year shall be carried forward to succeeding assessment years for being set off as provided in the Income-tax Act. Accordingly, in the absence of any clause for allowing expenses in instalments in C block, the Assessing Officer was not justified in restricting the deduction to 10 per cent. of expenses claimed by the assessee. The Commissioner (Appeals) is justified in directing the Assessing Officer to allow entire expenses claimed in the C block. That in respect of the K block, the Commissioner (Appeals) had given a categorical finding that all the expenses claimed by the assessee had been incurred post commercial production. According to the production sharing contracts of the K block, the option to claim expenses in instalments was available to the expenses incurred prior to the date of commercial production. Since, the expenses in question were post commercial production expenses, the clause would not apply. Accordingly, the Commissioner (Appeals) is justified in directing the Assessing Officer to allow the entire expenses claimed in the K block. (AY. 2017-18, 2018-19)
Dy. CIT v. Reliance Industries Ltd. (2024)109 ITR 180 (Mum)(Trib)

S. 43(5) : Speculative transaction-Business Expenditure-Business loss-Hedging contracts with bank to guard against loss Foreign exchange fluctuation-Not speculative transaction-Loss is allowable. [S. 28(i), 37(1), 260A] 743
The assessee was engaged in the business of manufacture and trading of dress and other materials. The assessee sold such goods through export also. On such export sales, there was a possibility of the foreign remittances being delayed for a variety of reasons. The assessee would therefore be exposed to foreign exchange fluctuation risks. To protect itself or at least to minimise the risk, the assessee entered into contracts with the bank. The Assessing Officer was of the opinion that such hedging contracts were speculative in nature and the expenditure incurred in the process was not an allowable deduction. The Commissioner (Appeals) as well as the Tribunal reversed this decision. High Court affirmed the order of the Tribunal.
PCIT v. MGM Exports (2024) 464 ITR 590 (Guj)(HC)

S. 43(5) : Speculative transaction-Forward exchange contract-Loss on cancellation is held to be non speculative in nature. 744
Held that loss on account of cancellation of forward contracts cannot be termed as speculative in nature as no motive or action in this regard is in existence. (AY. 2009-10) (ITA No. 6160/ Delhi/ 2016 dt. 30-4-2024)
DCIT v. J. K. Techno Soft Ltd (2024) Chamber's Journal-June-P. 116 (Delhi)(Trib)

S. 43(5) : Speculative transaction-High sea sales-Buying and selling edible oil-Final and physical delivery of goods had been taken by end user at port of destination after compliance with all customs formalities-Set off against interest income-Transactions cannot be termed as speculative transaction. [S. 73(1)] 745
Assessing Officer held transaction of buying and selling edible oil via high sea sales, assessee did not physically receive oil at port of delivery in India hence treated as

speculative. The AO disallowed set-off of loss against interest income, claiming it was not permissible under Section 73(1). CIT(A) allowed the claim of the assessee. On appeal the Revenue contended that in transaction of buying and selling edible oil via high sea sales, assessee did not physically receive oil at port of delivery in India. Instead, ultimate purchaser took delivery and paid customs duty. Consequently, revenue argued that this transaction fell under speculative transaction as per provisions of Section 43(5). Tribunal held that goods were purchased by importer from a foreign seller and loaded onto a ship. Assessee then bought goods while in transit on high seas and sold them by transferring title documents, including sale invoice and High Seas sales agreement, to ultimate buyer and buyer took physical delivery at port in India, complying with all customs formalities. Therefore it could be said that ultimate settlement of transactions entered into by assessee took place by actual delivery of goods to ultimate buyer and thus transactions of sale and purchase in instant case did not fall within provisions of section 43(5) and were not speculative transactions. Order of the CIT(A) is affirmed. (AY. 2015-16)

DCIT v. Apex Fibre India Ltd. (2024) 207 ITD 504 (Amritsar) (Trib.)

746 **S. 43(5) : Speculative transaction-Loss from derivative transaction-Speculative transaction-Matter is restored to Assessing Officer to specifically examine same whether derivatives had been dealt with by assessee and whether such derivatives were transacted through recognised stock exchange as defined in section 43(5)(d). -Cash credits-Matter remanded. [S. 43(5)(d), 43(5)(e)]**

Assessee claimed loss on account of trading in derivatives. Assessing Officer disallowed set off of loss by treating derivative transaction as speculative transaction. CIT(A)) up held the order of the AO. On appeal issue is restored to Assessing Officer to specifically examine whether derivatives had been dealt with by assessee and whether such derivatives were transacted through recognised stock exchange as defined in section 43(5)(d) and further, if in both years, transactions carried out by assessee were found in order in terms of section 43(5)(d) and 43(5)(e), same was to be treated as normal business transactions and not as speculative transaction. Tribunal also set aside addition on account of unsecured loan to Assessing Officer for re-adjudication and verification as to financial capacity of creditor and whether creditor company had filed(AY. 2015-16, 2016-17)

Ganesh Ores (P.) Ltd. v. ACIT (2024) 208 ITD 114 / 232 TTJ 490 (Cuttack) (Trib.)

747 **S. 43(6) : Written down value-Liquidated damages-Compensation from suppliers-Capital receipts –Block of assets-Depreciation-Not to be reduced from the cost of fixed assets. [S. 2(11), 4, 32]**

Held that compensation from suppliers as liquidated damages is capital receipts hence not to be reduced from the cost of fixed assets. It is capital receipt. (AY. 2010-11,2011-12)

ITC Ltd v. ACIT (2024) 230 TTJ 921 / 38 NYPTTJ 626 (Kol)(Trib)

S. 43A: Rate of exchange-Foreign currency – Capital or revenue-Tribunal allowed foreign exchange losses towards the loan taken for acquisition of assets within India-However, Tribunal failed to analyze whether the expenditure in question could not be regarded as capital expenditure-Matter was to be remanded to Tribunal for fresh consideration. [S. 37(1), 260A]. 748

In an appeal preferred by the Revenue, the Hon'ble Bombay High Court had to decide on questions relating to the allowability of foreign exchange losses towards loans taken at the touchstone of section 43A of the Act. However, the Hon'ble Court observed that the foreign exchange losses must also be considered at the touchstone of section 37(1) of the Act, upon which there was no deliberation by the Tribunal. The controversy dealt with by the Tribunal was about the scope of section 43A but it was also important for the Tribunal to have examined whether the expenditure would qualify as revenue expenditure for purposes of section 37(1) of the Act and whether it can be stated conclusively that such expenditure cannot be regarded as capital expenditure. In absence of analysis from the Tribunal, the matter was accordingly remanded back to the Tribunal for effective adjudication on this issue. (AY. 2009-10)

PCIT v. Galaxy Surfactants Ltd. (2024) 469 ITR 181 /301 Taxman 173 (Bom)(HC)

S. 43A : Rate of exchange-Foreign currency-Business expenditure-Capital or revenue-External commercial borrowing loans-Loss on reinstatement of external commercial borrowing-Mere reinstatement of losses per Accounting Standards without actual payment or remittance-Addition cannot be made-Additional ground is admitted. [S. 37(1), 254(1)] 749

Held that the Assessing Officer had made disallowance of the exchange fluctuation under section 37 only for the reason that external commercial borrowing loans were utilised for the purpose of acquiring capital asset, which has enduring benefit. However, the Commissioner (Appeals) had made the disallowance by relying on section 43A. On appeal the Tribunal held that the disallowances under section 37 and under section 43A operate in different spheres. Section 43A is a deeming provision for adding or deducting the fluctuation loss or profit from the cost of the asset whereas disallowance under section 37 is for the reason that capital expenditure was specifically disallowed. There was merely reinstatement of losses per Accounting Standards without actual payment or remittance so as to invoke section 43A. Except for the assessment year in question, the reinstatement of income or loss from fluctuation of currency had been accepted in terms of the accounting done by the assessee. Therefore, the additional grounds were to be admitted. Addition is deleted. (AY. 2014-15)

Bando (India) P. Ltd. v. Dy. CIT (2024)114 ITR 275 /(2025) 233 TTJ 980 (Delhi)((Trib)

S. 43A : Rate of exchange-Foreign currency-Restatement of payables for capital assets-Matter remanded. 750

Tribunal held, that the Dispute Resolution Panel had given a categorical finding that the assessee had not demonstrated whether the foreign exchange gains on account of restatement of payables for capital assets at the end of the year was realised or unrealised capital gains. Accordingly, the Assessing Officer was to verify whether the foreign exchange gains were realised" or unrealised and then allow the claim of the assessee in accordance with law. (AY. 2007-08, 2008-09)

Joshi Technologies International Inc. v. Asst. CIT (IT) (2024)109 ITR 70 (Ahd)(Trib)

751 **S. 43B: Deductions on actual payment-Electricity Duty on sale of power payable to Government adjusted against sums due to assessee from Government-Entitled to deduction-Produce Certificate from Chartered Accountant to establish adjustment made within time as claimed. [Art. 136]**

Held, that there was no dispute that the assessee was entitled to the benefit of section 43B of the Income-tax Act, 1961. In the context of section 43B of the Act, apart from entitlement, the assessee was duty bound to produce the certificate showing proof of payment which the assessee claims by way of adjustment on August 21, 1990. Direction to assessee to produce the certificate before the Assessing Officer within four weeks and Assessing Officer to take certificate on record and decide the matter in accordance with law. (AY. 1990-91)

Gujarat Urja Vikas Nigam Ltd. v. CIT (2024)465 ITR 798/166 taxmann.com 96 (SC)

Editorial: Decision in Gujarat Urja Vikas Nigam Ltd (2010) 322 ITR 539 (Guj)(HC), is reversed with directions.

752 **S. 43B : Deductions on actual payment-LIC Mutual Fund purchased unsecured debentures of assessee-company-Interest on unsecured debenture payable by assessee to LIC Mutual Fund is not covered by section 43B-Allowable as deduction. [S. 37(1), Companies Act 1956, S. 4A, The Securities and Exchange Board of India (Mutual Funds) Regulations, 1996 (SEBI Mutual Funds Regulations), clause 2(q), Life Insurance Corporation Act, 1956. S. 3, Indian Trust Act, 1882, S. 6]**

Assessee extended interest on unsecured debentures payable during year to LIC Mutual Fund for another two years. It claimed deduction of interest payable to LIC Mutual Fund. Assessing Officer disallowed interest on ground that it had not been paid within stipulated period. Tribunal held that LIC Mutual Fund was a public financial institution covered under section 43B and sustained order of Assessing Officer. On appeal the Court held that since in view of language of section 4A of Companies Act, 1956 and section 43B it was evident that LIC Mutual Fund was not public financial institution, interest on unsecured debenture payable by assessee to LIC Mutual Fund is not covered by section 43B and it is allowable as deduction. The Tribunal has committed a manifest error of law to hold that LIC Mutual Fund is a public financial institution under section 43B. The disallowance of interest invoking the provisions of section 43B cannot be sustained. (AY. 2009-10)

V2 Retail Ltd. v. Dy. CIT (2024) 300 Taxman 575/ (2025) 473 ITR 712 (Cal.)(HC)

753 **S. 43B : Deductions on actual payment-Interest paid to financial institutions-Reassessment-Claim for deduction not made earlier-No original assessment-Assessment order pursuant to original and revised return-Claim made during assessment proceedings-Allowable as deduction. [S. 43B, 139(5), 147(b), 260A]**

The question before the High Court was when the AO having resorted to Section 147 of the Act whether he is bound to compute business income after allowing statutory deduction including under section. 43B in respect of the interest paid to financial institutions. Allowing the claim the court held that the expression "assess" used in s. 147 refers to a situation where assessment of income of an assessee for a particular year is, for the first time made by resorting to the provisions of S. 147 because the assessment had not been made in a regular manner under the Act. The expression "reassess" refers to a situation where an assessment has already been made but the

ITO has, on the basis of information in his possession, reason to believe that there has been under assessment on account of existence of any of the grounds contemplated by the provisions of S. 147(b). Reference may be had in this regard to the provisions of S. 147 itself. Since there was no original assessment proceeding and no assessment order, therefore, the question of reassessment does not arise. The orders passed by the AO were the assessment orders passed on original and revised return and claims made by the assessee during the assessment proceedings and, as such, the interest paid to financial institutions/banks being an allowable expenditure under S. 43B was bound to be allowed. Interest paid by the assessee during the assessment year in question was an allowable expenditure under S. 43B. The expenditure claimed by the assessee was rejected by the AO and upheld by the Tribunal on a misconceived ground that it could not have been claimed or allowed in reassessment proceedings whereas the fact was that the order passed by the AO was not a reassessment order but an assessment order pursuant to the original and revised return filed by the assessee and claims made during assessment proceedings. Followed, *Karnataka State Cooperative Apex Bank Ltd. v. Dy. CIT (2021) 323 CTR 730 / 207 DTR 351 (Karn)(HC) CIT v. Sun Engineering Works (P) Ltd. (1992) 107 CTR 209(SC) (1992) 4 SCC 363,* distinguished. (AY. 1999-2000, 2000-01)
KHR Hospitality India Ltd. v. CIT (2024) 338 CTR 761 (Cal) (HC)

S. 43B : Deductions on actual payment-Excise duty-Included in closing stock-No double deduction-Allowable as deduction. [S. 145, 260A] 754

Assessee claimed excise duty of certain amount being differential excise duty attributable to opening and closing stock of finished goods held by them during previous year. Tribunal held that if said amount was again allowed in assessment, it would amount to double deduction. On appeal the Court held that section 43B, provides that excise duty would be deductible only on payment basis in year in which it is actually paid. On the facts the excise duty paid and included in closing stock had to be claimed separately as a deduction otherwise assessee would not be claiming entire excise duty paid in year of its payment. Thus, while computing total income for relevant assessment year, assessee had claimed a deduction of excise duty actually paid in year 1985 and included in closing stock less excise duty paid and included in closing stock of 1984 which had already been claimed and same would not amount to double deduction. Appeal of assessee is allowed. (AY. 1986-87)
Johnson and Johnson Ltd. v. Dy. CIT (2024) 298 Taxman 388 (Bom.)(HC)

S. 43B: Deductions on actual payment-Unpaid interest on loan taken from world bank-Public financial institution-Unpaid interest no disallowance can be made-Electricity duty-Collection and subsequent transfer to the State Government-No disallowance can be made. [S. 43B(a)] 755

Held that neither the State Government nor the World Bank falls under the definition of public financial institution, State financial corporation, State industrial investment corporation, NBFC, scheduled bank or co-operative bank and, therefore, interest payable on loan taken from State Government/world bank is not covered within the provision of S.. 43B. Collection of electricity duty and subsequent transfer to the State Government, no disallowance can be made u/s 43B of the Act. (AY. 2016-17)
Jaipur Vidyut Vitran Nigam Ltd. v. DCIT (2024) 230 TTJ 748 / 240 DTR 353 / 38 NYPTTJ 690 / 164 taxmann.com 282 (Jaipur)(Trib)

756 **S. 43B : Deductions on actual payment-Tax collected at source-Holds custodian of Government-Not disallowable. [S. 143(1), 206C(6A)]**

Held that the tax collected at source by the assessee under the provisions of S.. 206C is the income-tax of the buyer of goods which is collected by the assessee from the buyer to be subsequently credited to the account of the Central Government within the stipulated time frame, and not a sum payable by the assessee, it cannot be debited to the P&L a/c and claimed as a deduction. The amount of TCS not deposited by the assessee cannot be disallowed under s. 43B. (AY. 2022-23)

Aay Kay Manufacuring Co. v. ITO (2024) 231 TTJ 76 (UO)(Amritsar)(Trib)

757 **S. 43B: Deductions on actual payment-Payment of GST before filing of return under section 139(4) –Matter remanded to the Assessing Officer in accordance with law. [S. 139(1), 139(4), 143(1)]**

Assessee filed its return under S. 139(4) after the expiry of the extended due date wherein a claim against GST liability was made. CPC disallowed the payment. CIT(A) is affirmed the order of the AO. On appeal the Tribunal held that CPC is justified in disallowing the claim of deduction. Since the NFAC perfunctorily confirmed the disallowance on the basis of delayed filing of the return without vouching the exact amount of GST discharged by the extended due date i. e., 30th Oct., 2019 and balance amount of GST paid beyond such extended due date for confirming disallowance under S. 43B, the matter is remanded back to NFAC to deal with this limited issue in accordance with law. (AY. 2019-20)

Sharp Aluminium v. ACIT (2023) 37 NYPTTJ 1635 / (2024) 227 TTJ 361 / 233 DTR 235 / 162 taxmann.com 74 / (Pune)(Trib)

758 **S. 43B : Deductions on actual payment-Statutory dues-Write-Back from taxable income-Provision offered to tax in earlier year and written back in subsequent year not taxable-Matter remanded for verification.**

Matter remanded to the Assessing Officer, verifying that the sum was already offered to tax in earlier years under section 43B, accepted deduction of the amount written-back from taxable income while giving effect to the appeal. Thus, provisions which were already offered to tax in earlier years and written back in subsequent years, could not be taxed in subsequent years. The deduction was held allowable for the year under consideration. (AY. 2003-04)

Hindalco Industries Ltd. v. Dy. CIT (2024)114 ITR 502 (Mum)(Trib)

759 **S. 43B: Deductions on actual payment-Electricity company-Electricity duty and tax on sale of electricity adjusted by Government against Government subsidy after close of accounting year-Deduction is to be allowed in year payment is made-Matter is remanded.**

Held that the Supreme Court in *Gujarat Urja Vikas Nigam Ltd v. CIT(2024) 465 ITR 798 (SC)* had held that the assessee was entitled to the benefit of section 43B of the Act. The adjustment of electricity duty by the Government against the subsidy sanctioned by the Government amounted to valid payment for the purposes of section 43B of the Act and deduction should be allowed on a payment basis in the year the payment is made. The matter was restored to the Assessing Officer for fresh adjudication in light of the

Supreme Court's order and after considering the facts and evidence presented by the assessee, particularly the chartered accountant's certificate as mandated. (AY. 1996-97)
Gujarat Urja Vikas Nigam Ltd. v. Dy. CIT (2024)113 ITR 37 (SN)(Ahd)(Trib)

S. 43B : Deductions on actual payment-TCS on sales of scrap-Not claimed as deduction-Journal entries-Addition is deleted. [S. 206C] 760
TCS collected is recorded through journal entries and held by assessee as custodian of Government and same is duly reflected as liability in audited balance sheet as at 31/03/2022. The AO disallowed under S. 43B of the Act. CIT(A) affirmed the order of the AO. On appeal the Tribunal held that since amount of income tax of buyers could not be debited in profit and loss account and claimed as a deduction by assessee, it is not hit by provisions of section 43B and addition made to income is deleted. (AY. 2022-23)
Aay Kay Manufacuring Co. v. ITO (2024) 207 ITD 254 (Amritsar) (Trib.)

S. 43B: Deductions on actual payment-Provision for leave encashment-Claimed only of amounts actually paid during previous year-Disallowance is deleted. [S. 145] 761
Held that the assessee, in the computation of income, had added back a sum resulting in a claim of amounts which had been certified by the auditor as being amounts actually paid during the previous year before filing the return for the assessment year. This was also evident from the tax audit report of the assessee. Once, the claim towards leave encashment was made on payment basis alone and there was no excess claim of the amount paid, the same had to be allowed. (AY. 2019-20)
Tata Steel Ltd. v. Dy. CIT (2024)109 ITR 18 (Mum) (Trib)

S. 43B : Deductions on actual payment-Current liability-GST amount is paid before due date of filing of return-No disallowance can be made. [S. 44AB 139(1)] 762
In the Audit report under section 44AB an amount of GST payable to totaling Rs. 67, 47. 034 remained unpaid. The Auditor reported in clause 26(i)(B) (b) ass duties and taxes not paid on or before the date of the audit report. The AO disallowed the claim. CIT(A) partly allowed the claim. On appeal the Tribunal held that the GST amount is paid before filing return, and it was not treated as an expenditure in profit and loss account, and no deduction was claimed, therefore, disallowance under section 43B is unjustified. (AY. 2020-21)
P. K. Parikh HUF. v. ITO (2024) 206 ITD 333 (Ahd) (Trib.)

S. 43B : Deductions on actual payment-Deductions under the section for interest paid on loans to banks are allowable if the payments are made by the due date for filing income tax returns. [S. 37(1), 139(1)] 763
The appeal filed by the assessee is against the disallowance on account of interest paid on loan to bank under Section 43B of the Act. The assessee claimed that the interest liability was outstanding at the beginning of the financial year and was paid during the year, as evidenced by the tax audit report and the bank statement.
The AO and the CIT(A) rejected the claim on the ground that the entries in the loan account statement were not clear, carried non-descript narrations of the entries in the loan account and held that such payments appeared to be in the nature of rebate or

discount received by the assessee. The assessee submitted date-wise details of the repayment of interest on term loan and buyers' credit to the CIT(A), but the CIT(A) ignored them and confirmed the addition. The ITAT set aside the order of the CIT(A) and remanded the matter back to the AO for fresh examination of the issue. (AY. 2018-19)
Urjaa Metalics P. Ltd. v. Asst. CIT [2024] 109 ITR 59(SN) (Delhi)(Trib)

764 **S. 43CA : Transfer of assets-other than capital assets-Full value of consideration-stock in trade-Agreement value-Stamp valuation-Difference between sale value and stamp value is below threshold margin of 10 Per Cent-Addition is deleted. [S. 50C]**
The Assessing Officer made addition under section 43CA of the Income-tax Act, 1961 for certain flats sold at a value lower than the stamp duty valuation and completed the assessment under section 143(3). The Commissioner (Appeals) gave partial relief to the assessee. On appeal by both the Revenue and the assessee the Tribunal held that Difference between sale value and stamp value is below threshold margin of 10 Per Cent. Addition is deleted. (AY. 2017-18)
Dy. CIT v. Neepa Real Estates P. Ltd. (2024)116 ITR 247/ 171 taxmann.com 56 (Mum) (Trib)

765 **S. 44AD :Presumptive basis-Trading business-Order of CIT(A) estimate of profit based on earlier year is held to be justified. [S. 132, 153A]**
Held that order of CIT(A) estimating profit based on earlier year is held to be justified. (AY. 2011-12, 2016-17, 2017-18)
Dy. CIT v. Sushil Tyagi (2024) 115 ITR 90 (SN)(Delhi)(Trib)

766 **S. 44AD : Presumptive basis-Cash credits-Unexplained money-Books of account not maintained-Cash deposits and withdrawals-Telescoping is applicable-Addition is deleted-Delay of 33 days in filing of an appeal is condoned. [S. 68]**
Held that the CIT(A) has not given benefit of telescoping. Addition as cash credits is deleted. (AY. 2016-17)
Ishtiaq Ahmad Rather v. ITO (2024) 115 ITR 27 (SN) (Amritsar)(Trib)

767 **S. 44AD : Presumptive basis-Transportation of goods-Difference in Form No 26AS and return of income-Net profit rate of 8. 24 Per Cent declared in return is directed to be accepted. [S. 44AB]**
The Assessing Officer completed the assessment by making addition of 30 per cent. of the total undeclared turnover as estimated income under the head Profits and gains from business or profession. The Commissioner (Appeals) reduced the addition to 15 per cent. of the undeclared turnover. On appeal the Tribunal held that the net profit rate of 8. 24 per cent is accepted. (AY. 2016-17)
Pasura Subbaiah Muthanna v. ITO (2024) 115 ITR 5 (SN)(Bang)(Trib)

S. 44AD : Presumptive basis-Unexplained money-Cash deposits Demonetisation-Cash deposits to be treated as part of gross turnover-Assessing Officer is directed to take only 8 Per Cent. of alleged gross turnover-Addition under section 69A is deleted-When the income is determined on estimate basis, bank transactions could not be segregated merely because deposits were made during the demonetisation period. [S. 69A, 147, 148] 768

Held, that the assessee's total cash deposits made during the year was Rs. 81,24,000, out of which only a small portion was deposited during the demonetisation period. If balance of the amount could become part of the gross turnover, a separate treatment could not be given to the normal deposit of money during the demonetisation period. Thus, the sum deposited during demonetisation period could not be assessed under section 69A, but to be construed as part of the gross turnover. The Assessing Officer is directed to take only 8 per cent. of the alleged gross turnover. Separate addition under section 69A is deleted. When income is determined on estimate basis, bank transactions could not be segregated merely because deposits were made during the demonetisation period. (AY. 2017-18)

Shyam Kumar Gara v. ITO (2024) 115 ITR 13 (SN)(Kol.)(Patna)(Trib)

S. 44AD : Presumptive basis-Sale of milk-Computation of Profits and gains of business on presumptive basis-Return not filed-Below taxable income-Directed to add 8 % of the turnover. [S. 139(1)] 769

Assessee had not been filing returns of income since its income was below taxable limit. In the other A. Y. on the basis of report of an Inspector that the assessee has been carrying on the business of sale of milk and on the basis of report of an Inspector, CIT(A) had restricted the addition to 6% of the total cash deposit. In view of the principle of consistency, Department could not be permitted to raise an issue in isolation for the immediately succeeding year for the same assessee. The CIT(A) held that the source of credit in assessee's bank account stood explained as turnover from sale of milk for the A. Y. under consideration. In view of the provisions of Section 44AD, AO was directed to add sum of 8% of the turnover to the assessee's income. (AY. 2011-12)

Swaran Singh v. ITO [2024] 109 ITR 579 / 205 ITD 725 (Amritsar) (Trib)

S. 44B : Shipping business-Non-residents-Computation-Certificate issued by Singapore Tax authorities will constitute sufficient evidence for accepting the legal position-No substantial question of law-DTAA-India-Singapore. [S. 90, 260A, Art. 9, 8, 24(1)] 770

Court held that under the laws in force in Singapore, the income is subject to tax by reference to the full amount thereof, whether or not remitted to or received in Singapore, then in that case art. 24(1) would not apply. Certificate issued by Singapore Tax authorities will constitute sufficient evidence for accepting the legal position. Tribunal was justified in allowing benefit of art. 8 and in holding that the limitation of benefit provided under art. 24 would not be applicable. No substantial question of law arises. (AY. 2008-09, 2012-13)

CIT (IT) v. APL Co. Pte Ltd [2023] 156 taxmann.com 530/ (2024) 337 CTR 856 (Bom)(HC)

771 **S. 44BB : Mineral oils-Computation-Presumptive tax-Non-resident-Service tax collected-Not includible in gross receipt-Order of High Court is affirmed-SLP of Revenue is dismissed. [S. 44BB(2)]**

High Court by impugned order held that reimbursement of service tax ought not to be included in aggregate of amounts specified in clauses (a) and (b) of section 44BB(2), as it is not an amount received by assessee on account of services provided by them in prospecting, extraction or production of mineral oils. SLP filed against impugned order of High Court was to be dismissed.

CIT (IT) v. Schlumberger Asia Services Ltd. (2024) 297 Taxman 1 (SC.)

Editorial: SLP dismissed, CIT(IT) v. B. J. Services Co. Me Ltd (2022) 145 taxmann.com 430/ (2023) 457 ITR 80 (Uttarakhand)(HC)

772 **S. 44BB : Mineral oils-Computation-Presumptive tax-Non-resident-Service tax collected-Not includible in gross receipt-SLP of revenue dismissed [S. 44BB(2)]**

Held that the service tax collected by in the course of provision of services and facilities in connection with or supply of plant and machinery on hire, in the prospecting for or extraction or production of mineral oils in India is not to be included in the amount paid or payable for the purpose of computation of the presumptive taxable income. SLP of revenue dismissed.

CIT v. Vantage International Management Co. (2024) 296 Taxman 160 (SC)

Editorial : Refer, CIT (IT) v. B. J. Services Co. Me Ltd (2022) 145 taxmann.com 430/ (2023) 457 ITR 80 (Uttarkhand)(HC)

773 **S. 44BB : Mineral oils-Computation-Non-resident-Royalty-supply/lease/hire of rigs to be used for drilling and exploration of mineral oils-Amount received is covered under provisions of section 44BB and taxable on gross/presumptive basis at rate of 10 per cent-DTAA-India-Malaysia. [S. 9(1)(vi), 115A, 260A, Art. 12]**

Assessee, a tax resident of Malaysia, entered into a contract with an Indian company for supply/lease/hire of rigs to be used for drilling and exploration of mineral oils and received certain amount. Assessee offered income from hiring/leasing of rigs as business profits to be taxed on gross/presumptive basis under section 44BB at 10 per cent-However, Assessing Officer treated it as FTS but DRP held same to be in nature of royalty under section 9(1)(vi) read with section 115A as well as article 12 of India-Malaysia DTAA. Tribunal held that since assessee had given on hire/lease equipments used or to be used in extraction/exploration of mineral oils, amounts received by assessee were fully covered under provisions of section 44BB and taxable on gross basis at rate of 10 per cent. Court held that clause (iv-a) of Explanation to section 9(1)(vi) makes a clear exclusion in respect of amounts which would be referable to section 44BB. Order of Tribunal is affirmed. (AY. 2012-13 & 2017-18)

CIT (IT) v. UMW Sher (L) Ltd. (2024)299 Taxman 67(Delhi)(HC)

Editorial : UMW Sher (L) Ltd v. CIT (IT) (2023) 199 ITD 692 (Delhi)(Trib)

774 **S. 44BB : Mineral oils-Computation-Payment received for providing various services in connection with mining activity would not be chargeable to tax as fees for technical services. [S. 9(1))(vii), 44AD]**

Assessee-company, incorporated in France, entered into contract with RIL for providing services in connection with mining activity. Dismissing the appeal of the Revenue the

Court held that payments received by assessee under said contract for providing mining activity were not chargeable to tax as fees for technical services under Explanation 2 to section 9(1)(vii) but more appropriately assessable under section 44BB. (AY. 2010-11)
CIT (IT) v. Technip France SAS (2024) 298 Taxman 119/(2025) 474 ITR 123 (Delhi)(HC)

S. 44BB : Mineral oils-Computation-In the absence of a PE of the assessee in India-Not taxable in India-DTAA-India-Canada-Non-Resident-Income subject to TDS-Interest cannot be levied. [S. 90, 209(1), 234B Art. 7] 775
Held that receipts of the non-resident assessee are not taxable in India under the provisions of s. 44BB for the reason that the assessee did not have a PE in India; impugned receipts partake the character of business income of the assessee hence, same are not taxable in India even under art. 7 of the Indo-Canada DTAA in the absence of a PE of the assessee in India. The assessee being non-Resident the income is subject to TDS hence interest cannot be levied. (AY. 2012-13, 2019-20 to 2021-22)
Computer Modelling Group Ltd. v. ACIT (IT) (2024) 231 TTJ 699 (Delhi)(Trib)

S. 44BB : Mineral oils-Computation-Presumptive tax-Gross receipts-Circular No. 1 of 2014, dt. 13-1-2014(2014) 360 ITR 53 (St) Circular No. 4 of 2008, dt. 28-4-2008 (2008) 300 ITR 92 (St) 776
Held that the assessee, as a non-resident, is given the benefit of the special rate of tax per section 44BB, the legislative intent was only to tax the assessee at 10 per cent. of the amount paid or payable to the assessee, received on account of the business activity of the assessee. The word amount could not be interpreted to mean the Goods and Services Tax/Service Tax, which was collected by the assessee from its customers and paid to the Government. Thus, the circulars could not be interpreted differently to include Goods and Services Tax/Service Tax while computing the profit and gains of a non-resident, engaged in the business of exploration, etc., of mineral oils. Addition is deleted. (AY. 2021-22)
Servicos De Petroleo Constellation SA v. Dy. CIT (IT) (2024) 115 ITR 64 (SN)(Mum) (Trib)

S. 44BB : Mineral oils-Computation-Income deemed to accrue or arise in India-Business connection-Permanent Establishment-DTAA-India-UK [S. 9(1)(i), Art. 5] 777
Assessee is a tax resident of UK and was awarded contract from ONGC along with other consortium members whereby assessee was required to manufacture and supply subsea production system components. Assessing Officer held that consortium member was working on behalf of assessee-company which formed PE of assessee company and further held that since activities undertaken by assessee were in relation to extraction and production of mineral oil, assessee would be covered under provisions of section 44BB. He computed 10 per cent of the receipts as income of the assessee from profit and gains of business. DRP held that issue of existence of PE is academic in nature as applicability of section 44B was not dependent upon existence of PE. On appeal the Tribunal held that not a single piece of evidence had been brought on record by Assessing Officer to establish that assessee had any kind of PE in India in year under consideration. Section 44BB could not be invoked to tax receipts from offshore supply on presumptive basis as revenue had failed to establish existence of PE in India. (AY. 2021-22)
Baker Hughes Energy Technology UK Ltd. v. ACIT (IT) (2024) 206 ITD 436 (Delhi) (Trib.)

778 **S. 44BBA : Air craft-Non-residents-Computation-Air craft-Service tax-Statutory levy-it did not form part of receipts of assessee for purpose of section 44BBA. [S. 44BBBA(1)]**
The Assessing Officer and CIT(A) held that Service tax formed part of turnover as referred in section 44BBA(1). On appeal the Tribunal held that service tax collected by assessee-airline operator from its customers did not have any element of income as it was collected by assessee from its customers for and on behalf of Central Government on account of a statutory levy and, therefore, it did not form part of receipts of assessee for purpose of section 44BBA. Only such amounts which are paid or payable for service provided by assessee can form part of gross receipts for purpose of computation of gross total income under section 44BBA(1). (AY. 2018-19)
Cathay Pacific Airways Ltd. v. ACIT (IT) (2024) 205 ITD 562 (Kol) (Trib.)

779 **S. 44BBB : Foreign companies-Civil construction-Turnkey power projects-Offshore supply contracts-Business profits-Income deemed to accrue or arise in India-Business connection-Contracts were carried out and concluded outside India, income received from offshore supply contracts would not be taxable in India-DTAA-India-Russia. [S. 9(1)(i), Art. 7]**
Assessee, a Russian Federation company, which is engaged in business of setting up power projects which included construction, erection of plant and machinery and testing and commissioning of power projects. Assessee received income from offshore supply contracts and contended that since offshore supply contracts were carried out and concluded outside India, no income would be deemed to accrue or arise in India and, thus, same would not be taxable in India. Assessing Officer held that receipts from offshore supply would be part of income offered to tax under section 44BBB. The DRP affirmed the order of the AO. On appeal the Tribunal following the earlier order of the Tribunal held that since there had been no change neither in terms of agreements nor in nature of work carried out as per said contract, finding in earlier years would hold good for impugned year and, thus, income received by assessee from offshore supply contracts would not be taxable in India. (AY. 2021-22)
Atomstroyexport v. DCIT (2024) 208 ITD 767 /115 ITR 30 (SN) (Mum) (Trib.)

780 **S. 44C : Non-residents-Head office expenditure-Permanent establishment-Reimbursing head office towards subscription charges paid on its behalf-Not fees for technical services-DTAA-India-USA. [S. 9(1)(vii), Art. 12]**
Held, that merely by providing services in the form of reports, that did not lead to the inference that technology had been made available to the assessee and since the Department had not brought anything conclusive to prove that services had made available, knowledge and technology in a manner that the assessee shall not require such services from the head office for the purpose of conducting its business in India in the future, the "make available" clause had not been satisfied and therefore the services did not qualify as fees for "included services" under article 12 of the Double Taxation Avoidance Agreement. Further, technical services did not fall within the embargo provided under section 44C of the Act. The assessee is eligible to claim deduction of technical service charges of paid to the head office. (AY. 2007-08, 2008-09)
Joshi Technologies International Inc. v. Asst. CIT (IT) (2024)109 ITR 70 (Ahd)(Trib)

S. 45: Capital gains-Transfer-Part performance of contract-Joint development agreement-No accrual-Not registered-Ownership is retained-Possessing is parted for limited purpose of development-Not liable to be assessed as capital gains. [S. 2(47)(v),153A, 153C, Registration Act, 1908, S. 17(IA), 49, Transfer of Property Act, 1882, S 53A] 781

The Assessing Officer issued the notice to assesss the capital gains on the basis of joint development treating the transaction as transfer. The assessee filed a detailed response stating that the assesser had not received any consideration under the joint development agreements and that the two joint development agreements did not constitute any "trans fer under section 2(47) of the Act. Subsequently, the assessee cancelled the two joint development agreements because of non-performance by the developers. The Assessing Officer passed an assessment order under section 153C read with section 143(3) of the Act making an addition to the returned income of the assessee under capital gains. The Assessing Officer held that the two joint development agreements constituted transfer in terms of section 2(47) of the Act and that the minimum guaranteed return amounts reflected in the development agreements had accrued to the assessee even though the assessee might not have actually received them. On appeal, the Commissioner (Appeals) set aside the assessment order. On appeal by the Revenue, the Tribunal restored the assessment order. On appeal by the assessee allowing the appeal, the Court held that the joint development agreements dated December 31, 2008, were not registered, though they were required to be compulsorily registered under section 17(1A) of the Registration Act, 1908, post the introduction of this provision by the Registration and Other Related Laws (Amendment) Act, 2001. In the joint development agreements the ownership of the capital asset was retained by the assessee through-out. The clauses relating to parting of possession, besides being unclear, suggested that at the highest, possession was to be parted with for the limited purpose of development. The unregistered agreement dated December 31, 2008, could not be construed as a document effecting transfer of the subject properties in terms of section 2(47) of the Act. Accordingly not liable to be assessed as capital gains. Order of the Tribunal is set aside. Followed, *CIT v. Balbir Singh Maini (2017) 398 ITR 531 (SC)* (AY. 2005-06 to 2011-12)

Prithvi Consultants Pvt. Ltd. v. Dy. CIT (2024)470 ITR 37 (Bom) (HC)

S. 45 : Capital gains-Transfer-Date of transfer-Transfer of securities-Securities sold in physical form-The date of broker's note that should be treated as the date of transfer in cases of sale transactions of securities provided such transactions are followed up by delivery of shares and the transfer deed-Dematerialised share scrips and the date of acquisition of shares would be date only when dematerialised shares are entered in the demat account with depository is incorrect-Order of Tribunal is set aside-Entitle to exemption. [S. 10(38), 45(2A), 260A] 782

Tribunal held that dematerialised share scrips and the date of acquisition of shares would be date only when dematerialised shares are entered in the demat account with depository. On appeal the Court held that Court held, that in view of Circular No. 704 dated April 28, 1995 ([1995] 213 ITR (St.) 7) issued by the Central Board of Direct Taxes, the capital gains from the sale on February 22, 23 and 28, 2005 of shares purchased by the assessee on February 10, 2004 were long-term capital gains exempt under section 10(38) of the Act. Court also observed that section 45(2A) of the Income-

tax Act, 1961 deals with the determination of the date of transfer of securities. In terms of Circular No. 704, dated April 28, 1995 ([1995] 213 ITR (St.) 7) it is the date of broker's note that should be treated as the date of transfer in cases of sale transactions of securities provided such transactions are followed up by delivery of shares and the transfer deed. Similarly, in respect of purchase of securities the holding period shall be reckoned from the date of the broker's note for purchase on behalf of the investors. In case the transactions take place directly between the parties and not through stock exchanges the date of contract of sale as declared by the parties shall be treated as the date of transfer provided it is followed up by actual delivery of shares and transfer deeds. The Central Board of Direct Taxes by Circular No. 768 dated June 24, 1998 ([1998] 232 ITR (St.) 5) issued another circular for determination of date of transfer and the period of holding of securities held in dematerialised form under section 45(2A). On a reading of this circular it is seen that there is nothing to indicate that the circular excludes cases of securities sold in physical form. In fact the circular deals with securities held in physical form as well as those in dematerialised form. Furthermore, the circular has also clarified the position as to the applicability of the earlier Circular No. 704 dated April 28, 1995 ([1995] 213 ITR (St.) 7). (AY. 2005-06)

Nawal Kishore Kejriwal v. CIT (2024)469 ITR 543/ 151 taxmann.com 117 (Cal)(HC)

783 **S. 45 : Capital gains-Transfer of agricultural land-Land shown as agricultural in Government records-Burden is on Revenue to prove that land was not actually agricultural-Matter is remanded to the Assessing Officer. [S. 2(14)(iii), 50C, 254(1), Art. 226]**

Allowing the petition the Court held, that the Assessing Officer should have restricted his scope to determining whether the land was situated in an area which was comprised within the jurisdiction of a municipality or cantonment board and whether it had a population in excess of ten thousand. If the additional evidence submitted by the assessee mentioning that the land sold as agricultural land did not inspire confidence or required further verification, the Assessing Officer should have conducted proper enquiry to ascertain the authenticity of certificates issued by Talati and Gram Sevak. Without disproving the correctness of the confirmation and certificates issued by the Talati and Gram Sevak, the Assessing Officer was not justified in rejecting the assessee's claim of agricultural land particularly when the evidence showed that the lands were recorded as agricultural lands in the Government records. The assessment of capital gains was not valid. Where the assessee brings evidence that the land in question was recognised as agricultural in Government records, the Revenue authorities are duty bound to verify the authenticity of such evidence and if they want to reject the claim, they must bring contrary material on record to disprove the claim. Matter remanded to the Assessing Officer. (AY. 2013-14)

Ashok Chaganlal Thakkar v. NFAC (2024)466 ITR 726 / 159 taxmann.com 559 (Bom)(HC)

S. 45 : Capital gains-Consideration received for subsequent granting of development as per the commitment letter for granting permission to right for uploading TDR is assessable as long term capital gains and not as income from other sources-Substantial question of law raised first time before the Honourable High Court in an appeal filed by the assessee is admitted by the Honourable High Court. [S. 56, 260A] 784

The Asessessee had purchased a land at Khar Mumbai, vide Deed of Conveyance dated August 28, 1956. He constructed a bungalow consisting of ground floor and first floor. Vide agreement dated September 29, 1992 the assessee executed an agreement for redevelopment with Gokul Construction Co. As per the agreement the assessee received an amount of Rs. 1.55 Crores in FY. 1993-94 and offered the same as long term capital gains for tax in AY. 1994-95. By exchange of Letter dated September 29, 1992 the Developers had agreed to pay additional amount to the assessee Rs. 1,000 per square foot of TDRs that would be utilized. In the year 2016 & 2017 the Developer had paid 1,00,92,750 for loading TDR in the building. The assessee had offered the said amount as long term capital gains. The Assessing Officer assessed the said receipt as income from other sources. The order of the Assessing Officer was affirmed by the CIT(A) and Tribunal. On appeal to the High Court,allowing the appeal the Honourable Court held that development agreement and the commitment letter should be read as one agreement and should be considered as payment under the development agreement itself. The stand of the assessee offering the said receipt as long term capital gains was affirmed. The petitioner had also raised additional substantial question law before the Honourable High Court relying on the judgement of *CIT v. Sambhaji Nagar Co-operative Society Ltd (2015) 370 ITR 325 (Bom)(HC) and CIT v. Maheswari Prakash-2 Co-Operative Housing Society Ltd (ITA No 2346 of 2009 dt. 24-4-2015)(Order of Tribunal Maheswari Prakash-2 Co-Operative Housing Society Ltd v. ITO (2009) 118 ITD 223 (Mum)(Trib)*, which reads as under " Whether on the facts and in the circumstances of the case, as the assessee had not incurred any cost to acquire the additional FSI,the amount of Rs, 1,00,17,750 / received from the developer is not taxable ?".

Revenue contended that the issue raised in the additional substantial question of law was not argued before the Income tax Appellate Tribunal hence the Court should not frame the substantial question of law proposed. Honourable High Court admitted the substantial question of law. At the time of hearing the appellant had not pressed the question no 2 which was originally framed and question no 3 which was later framed. (AY. 1997-98)

Sunil PranSikand v. ACIT (2024)466 ITR 770 /164 taxmann.com 751(Bom)(HC)

S. 45:Capital gains-Business income-Total income-Redemption of mutual fund units-Income taxable as capital gains and not as business income. [2(45), 28(i), 260A] 785

Assessee-partnership firm was engaged in the business of investing in mutual funds. During the year, it earned profit on redemption of mutual funds which were offered to tax under the head 'Capital Gains'. However, the assessing officer assessed the income under the head 'Profits and Gains from Business or profession'. The Commissioner of Income-Tax (Appeals) and Hon'ble Delhi Tribunal upheld taxability under the head 'Capital Gains'. On appeal by the Department, the Hon'ble Delhi High Court upheld the order of the lower Appellate Authorities holding that owing to the quantum of trade,

value, purpose, period for which mutual funds were held, and how disclosure had been made in books of account, the transaction was in the nature of investment and not motivated by trade. Therefore, the gains were to be assessed under the head 'Capital Gains'. (Circular No. 19/2017, dated 12-6-20017). (AY. 2006-07), 2010-11)
PCIT v. Wig Investment (2024) 461 ITR 117 / 158 taxmann.com 379 (Delhi) (HC)

786 **S. 45 : Capital gains-Transfer-Development agreement-Irrevocable power of attorney-Registration of a contract is not relevant for the applicability of section 2(47)(v)-Transferred 62 percent of land to a developer in exchange of 38 percent of the developed area to be constructed under an unregistered joint development agreement-transaction was liable to capital gains under section 2(47)(vi) in the year of agreement-Matter remanded for determination of cost of acquisition. [S. 2(47)(vi), 48, 50C, Transfer of Property Act, 1882, S 53A]**
Tribunal held that the assessee transferred 62 percent of land to a developer in exchange of 38 percent of the developed area to be constructed under an unregistered joint development agreement. Transaction was liable to capital gains under section 2(47)(vi) in the year of agreement. The Tribunal also held registration of a contract is not relevant for deciding the applicability of section 2(47)(v). Tribunal held that transaction between the assessee and developer under JDA /GPA constituted a transfer under section 2(47)(v) and was liable to capital gain in the year of entering in to the agreements. As regards quantification of capital gain, the matter was set aside to the file of the Assessing Officer with the observation that since land in question was acquired prior to 1st April 2001, fair market value on that date would be considered cost of acquisition (and further indexed under section 48) and sale consideration would be compared to stamp duty value on transfer date under section 50C. (AY. 2012-13) (ITA No. 1008/ Coch / 2022 dt. 12-1-2024)
K. P. Mohamed Ali v. ITO (2024) BCAJ-March-P. 34 (Cochin)(Trib)

787 **S. 45 : Capital gains-Taxable in the year in which possession of constructed premises was received by the assessee and not in the earlier year when occupancy certificate was granted-Section 45(5A) which has been introduced w. e. f. 1-4-2018 applies w. e. f. AY. 2018-19 and not AY. 2017-18-Fair market value deemed to be full value of consideration in certain cases-Value of consideration-Full value of the consideration should be computed on the basis of guideline value of land or building that is transferred / received on development and not cost of construction reported by the developer as the said report was not supported by supporting documents. [S. 45(5A), 48, 50C, 50D]**
Tribunal held that capital gain is taxable in the year in which possession of constructed premises was received by the assessee and not in the earlier year when occupancy certificate was granted. Section 45(5A) which has been introduced w. e. f. 1-4-2018 applies w. e. f. AY. 2018-19 and not AY. 2017-18. Tribunal also held that full value of the consideration should be computed on the basis of guideline value of land or building that is transferred / received on development and not cost of construction reported by the developer. Order of CIT(A) based on the decision of Karnataka High Court in *ACIT v. Shankar Vittal Motor Company Ltd (ITA. No, 653 of 2016 dt 1-12-2021). (AY. 2017-18) (ITA No. 775 /Bang / 2024& 954 /Bang / 2024 dt. 12-8-2024)*
AlagappaMuthiah HUF v. DCIT (2024) BCAJ-October-P. 54 (Bang)(Trib)

S. 45 : Capital gains-Capital loss-Transaction in securities-Purchase and sale of units of mutual fund –Whether Fictitious or Sham-Loss is allowable as short term capital loss-Transaction cannot be considered as avoidance of tax-Provision of section. 94(7) is not applicable. [S. 94(7)] 788

Held that purchase and sale of units of mutual fund just before the record date of dividend acting on a publicly available notice issued by mutual fund and sale after the record date, can not be considered as sham transaction. Loss is allowable as short term capital loss. Transaction cannot be considered as avoidance of tax or fictitious or sham,provision of section. 94(7) is not applicable. (AY. 2016-17)

Goldiam International Ltd. v. DCIT (2024) 230 TTJ 1 / 238 DTR 33 / 38 NYPTTJ 411 (Mum)(Trib)

GoldiamJewelry v. Dy. CIT v. DCIT (2024) 230 TTJ 1 / 238 DTR 33 / 38 NYPTTJ 411 (Mum)(Trib)

S. 45 : Capital gains-Transfer of land owned by partnership firm to its partners-Transferred at cost by book entry-Adjusted against capital balance of partner-Not taxable as capital gains. [S. 2(47)] 789

Tribunal held that transfer of land owned by partnership firm to its partners,transferred at cost by book entry which is Adjusted against capital balance of partner is not taxable as capital gains. Tribunal relied on the Judgement of Bombay High Court in *CIT v. Mehta and Bros (1995) 214 ITR 716 (Bom)(HC)*, where in the Court held that the transfer of immoveable property belonging to the firm to its partners by means of book entry is not valid. Tribunal held that once the transfer is treated as not valid because of mere passing of book entry, there cannot be any capital gain. Addition is deleted. (AY. 2017-18) (ITA No. 691 /Pune /2024 dt. 25-10-2024)

Rajkamal Stone Metal Works v. ACIT(2024) Chamber's Journal-December-P. 99 (Pune)(Trib)

S. 45: Capital gains-Capital loss-Sale of shares-Cost of acquisition-Special provision of S. 50CA which considers the fair market value as full value of consideration for transfer of unquoted shares has been brought into effect from asst. yr. 2018-19-Loss cannot be disallowed. [S. 48, 5OCA] 790

Held that claim for short-term capital loss arising on the sale of shares could not be disallowed simply because the amount of sale consideration is very low as compared to the cost of acquisition; there was no provision like S. 50CA to tinker with such full value of consideration in the relevant assessment year. Special provision of S. 50CA which considers the fair market value as full value of consideration for transfer of unquoted shares has been brought into effect from assessment year, 2018-19. (AY. 2010-11)

Dayal Agro Products Ltd. v. JCIT (2024) 231 TTJ 860 / 241 DTR 225 / 38 NYPTTJ 954 (Nag)(Trib)

791 **S. 45: Capital gains-Long-term or short-term-Letter of allotment-Period of holding to be considered from the date of allotment-Held to be long term capital gains-Investment in a residential house-Wrongly claimed u/s 54-Matter is remanded to the Assessing Officer for verification. [S. 2(29AA), 2(29B), 54, 54F]**

Held that Letter of allotment was issued by the builder to the assessee on 15th Feb., 2010 by which a right to own the flat as identified by the assessee and builder in the project to be undertaken for construction had accrued on the assessee. The right which accrued to the assessee is the booking right, i. e., the right to purchase the flat and obtain the title. Only that agreement which intends to convey these rights accruing to parties can be considered as the source of accrual of rights to the assessee. Assessee has not defaulted on the terms and conditions of the letter of allotment. She made all the payments as required under the letter of allotment which has been duly acknowledged in the subsequent registration of the agreement to sell. Assessable as long term capital gains. As regards investment in a residential house which was wrongly claimed u/s 54, the Matter is remanded to the Assessing Officer for verification. (AY. 2016-17)

Minaxi Mahesh Pawani (Deceased) Through LR Pratik Mahesh Pawani v. ITO (IT) (2024) 231 TTJ 19 / 241 DTR 124 (Mum) (Trib)

792 **S. 45:Capital gains-Suppression of sale-Paper seized from the premises of purchaser-Loose papers-Matter is restored back to the file of the CIT(A) for fresh determination of the issue in accordance with law after making enquiries or causing enquiry through the AO. [S. 48, 131, 251]**

Held that based on the documents seized from purchaser, the AO enhanced the sale consideration and made addition in the hands of assessee; while holding in favour of the assessee, the CIT(A) has not discussed as to how a tangible document/loose paper found from the possession of the purchaser in course of drastic action of search is unworthy of any reliance; CIT(A) has also not made any discussion on non-compliance of summons issued to the purchaser under s. 131; matter is remanded for reconsideration. (AY. 2014-15)

ACIT v. DSL Properties (P) Ltd. (2024) 231 TTJ 66 (UO)(Delhi) (Trib)

793 **S. 45: Capital gains-Business income-Profit from sale of land-Assessee held the entire piece of land for five long years-Improvement made in the plot of land which was barren and uneven by resorting to land tilling, fencing, etc., was only with a view to make the land saleable and further plotting of the said land was also part of the same exercise-Assessable as capital gains and not as business income. [S. 2(13), 28(i)]**

Tribunal held that the assessee having held the land for well over five years before selling the same, the obvious intention of the assessee was to make investment for capital appreciation and, therefore, the profits earned has to be considered as capital gains; simply because the piece of land has been bifurcated into five different parts to make it saleable after a long period of five years from the date of investment, per se cannot grant the character of stock-in-trade so as to give it a colour of business activity. Followed, *Jankiram Bahadur Ram v. CIT (1965) 57 ITR 21 (SC), CIT v. Kasturi Estates (P) Ltd. (1966) 62 ITR 578 (Mad), CIT v. Holck Larsen (1986) 58 CTR 53 / 160 ITR 67 (SC)*

and Asstt. CIT v. Ashok Motilal Kataria (2009) 308 ITR 298 (Pune(Trib) G. Venkataswami Naidu & Co. v. CIT (1959) 35 ITR 594 (SC) (AY. 2014-15)
ACIT v. Himanshu Garg (2024) 232 TTJ 472 (Delhi)(Trib)

S. 45 : Capital gains-Full value of consideration-Amount kept in escrow account-Share purchase agreement-The unreleased amount kept in escrow account as deposits cannot be assessed as sale consideration-Amount can be taxed in later years in respective years of receipt or accrual. [S. 4, 5, 48] 794

The aassessee sold its share holdings in the wholly owned subsidiary. As per purchase agreement certain amount to be kept in escrow account as deposits. The amount to be released after 2nd year, 4h year and 8 th year on certain agreed terms after adjusting of claim arising of potential liabilities in a manner prescribed therein. The AO made addition on the basis of consideration specified in the agreement and has considered the amount kept in escrow account also as accrued to the assessee. CIT(A) affirmed the order of the AO. On appeal the Tribunal held that funds have not been released to the assessee till date, therefore, the amount kept in escrow deposits cannot be regarded as sale consideration accrued to the assessee with reference to S 48 for the purposes of quantification of capital gains chargeable under s. 45. Amount recovered out of escrow account by the assessee in the later years shall be liable to taxation in the respective years of receipt or accrual. *Dinesh Vazirani v. P CIT (2022) 445 ITR 110 (Bom) followed; Caborandum Universal Ltd. v. Asstt. CIT (2021) 283 Taxman 312 (Mad) (HC),* distinguished. (AY. 2012-13)
Modi Rubber Ltd. v. DCIT (2024) 228 TTJ 848 / 236 DTR 145 (Delhi)(Trib)

S. 45 : Capital gains-Compulsory acquisition of land by National Highways Authority of India-Compensation-Entitle to exemption. [S. 4] Right to fair compensation and transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013, S. 96 S. Circular No. 36 Of 2016, Dated 25-10-2016 (2016) 388 ITR 48 (St) 795

Held that the compensation received out of compulsory acquisition of land under the National Highways Act was exempt from Income-tax by virtue of section 96 of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 and clarificatory Circular No. 36 of 2016, dated October 25, 2016. (2016) 388 ITR 48 (St)) Addition is deleted. (AY. 2016-17)
Surinder Kumar v. ITO (2024)116 ITR 529/ [2025] 172 taxmann.com 13 (Amritsar)(Trib)

S. 45: Capital gains-Long-term capital gains-Purchase and sale of shares-Penny stock-Matter remanded to the Assessing Officer. [S. 10(38)] 796

Held that the assessee was allotted Shares prior to Dematerialisation of shares. Purchase of shares cannot be doubted. Date of purchase has to be proved by assessee. Capital gains is to be categorised as short-term or long-term. Matter remanded to Assessing Officer. (AY. 2014-15 to 2016-17)
Nidhi Manan Shah v. ITO (2024)116 ITR 62 (SN)(Mum)(Trib)

797 **S. 45 : Capital loss-Sale of shares-Related entity-Avoidance of tax-Sham transaction-Transactions not colourable device-Disallowance of long-term, and short-term, capital loss is not justified-Carry forward and set off-Entitled to manage its business affairs as it deems fit within legal framework-Loss is allowable. [S. 72, Companies Act, 2013,S. 19]**

Held that the loan given by the subsidiaries was based on business prudence to create specific rights and obligations amongst the entities in the regular course of business. Moreover, the movement of funds amongst the entities did not result in any creation of tax loss or tax claim and, therefore, there was no reason to dispute it. The sequence of transactions could not simply be stated as sham. The Assessing Officer had blurred the difference between legitimate tax planning and tax avoidance device. Loss is allowable as deduction. (AY. 2017-18)

Dy. CIT v. Welspun Steel Ltd. (2024)114 ITR 107 /229 TTJ 485 (Mum)(Trib)

798 **S. 45 : Capital gains-Sale of shares-Mode of Computation-Non-Resident corporate entity-Sale of shares to another shareholder-Independent parties-Valuation report-Disregarding agreement value between assessee and other shareholder is not justified Section 50CA which was introduced by Finance Act, 2017 with effect from 2018-19 is inapplicable to year in question-Addition is not valid-Difference between income returned and that reflected in Form 26AS-Assessing Officer is directed to verify and reconcile. [S. 48, 50CA]**

Held that the sale of shares to independent parties based on the valuation report,the rejection of valuation report by the AO is not proper. Tribunal also held that full value of consideration could not be substituted with the fair market value. Section 50CA was introduced by the Finance Act, 2017 with effect only from assessment year 2018-19 and did not apply to the year in question. As regards difference between income returned and that reflected in Form 26AS the Assessing Officer is directed to verify and reconcile. (AY. 2014-15)

Smart Information Worldwide Inc. v. Dy. CIT (IT) (2024)114 ITR 33 (SN)(Chennai)(Trib)

799 **S. 45 : Capital gains-Long-term capital gains-Merely on the basis of Audit report addition cannot be made. [S. 143(1)]**

Held that the Commissioner (Appeals) had erred in making addition towards long-term capital gains as reported in clause 16(d) of the tax audit report, while the assessee had duly declared long-term capital gains in the return and paid due taxes thereon. Addition is deleted. (AY. 2021-22)

Anand Dilipbhai Patel v. ITO (2024)113 ITR 44 (SN)(Ahd)(Trib)

800 **S. 45 : Capital gains-Capital asset-Family settlement-Right of possession agreement-Undisclosed sources-Matter is restored to file of Assessing Officer to examine aforesaid facts. [S. 2(14), 69]**

Assessee entered into a family settlement agreement by way of which assessee and four other family members had been granted right of possession/right of tilling over a property and claimed that right of possession in respect of such land was a capital asset. Assessing Officer held that since assessee failed to prove ownership on land, income

received by assessee for signing possession agreement was assessee's unexplained income from undisclosed sources. CIT(A) affirmed the order of the AO. On appeal the Tribunal held that family agreement/arrangements by which possession of such property was given to assessee, was never brought to notice of Assessing Officer for his consideration and even before Tribunal. The assessee had taken cost of acquisition of right of possession by taking value of land as per value computed by registered Valuer Report as on 1-4-1981, when as per his own submission, assessee got possession right over such property by way of a family arrangement without incurring any cost. Matter is restored to file of Assessing Officer to examine aforesaid facts. (AY.)
Gunvantbhai Narandas Patel v. ITO (2024) 208 ITD 105 (Ahd) (Trib.)

S. 45 : Capital gains-Agricultural land-General power of attorney-Not owner of land-Land belong to third party-No addition can be made as sale of capital asset. [S. 2(14)] 801
A search and seizure operation was conducted in case of assessee. During search, certain sale deeds with respect to sale of agricultural land were found and seized and assessee was asked as to why capital gains were not attracted in said transaction. Assessee submitted that he entered into a sale-cum-GPA agreement. Assessing Officer, without referring to registered agreement of sale-cum-GPA, made addition in hands of assessee for entire land admeasuring Ac. 32. 27 gts. However, registered document showed that only agricultural land admeasuring Ac. 22. 27 gts was purchased by assessee and there was no purchase document available with Assessing Officer for remaining Acs. 10. 00 gts of agricultural land. Since land admeasuring Ac. 10.00 gts was owned, registered and held by a third party who was not connected with assessee in any manner, land owned by third party is not a capital asset in hands of assessee and, therefore, no addition could be made in respect of such land for capital gains arising out of sale of capital asset. (AY. 2020-21)
ACIT v. Narendra Kumar Kamaraju [2024] 207 ITD 131 (Hyd) (Trib.)

S. 45 : Capital gains-Share transactions-Income shown as business income in preceding year-Assessable as capital gains. [S. 28(i)] 802
Assessee was in share trading activity and had returned short-term capital gain. Assessing Officer treated income from trading activity of shares as business income of assessee on the ground that in preceding year, assessee had declared profit from share trading activity as business and only a small portion was returned as short-term capital gain. Commissioner (Appeals) deleted addition holding that assessee had been investing in share market for more than 10 years, and declaring income therefrom under head capital gains. He held that assessee had held shares as investment and not as stock-in-trade which was accepted by Assessing Officer. He held that Assessing Officer had merely gone on the basis of nomenclature given in accounts to determine nature of income. Tribunal held that income earned therefrom had been rightly returned by assessee under the head capital gains, and there was no case with Assessing Officer for treating same as income from business and profession. (AY. 2016-17)
ITO v. Jhaveri Sandeep Bipinchandra (HUF) (2024) 207 ITD 622 (Ahd) (Trib.)

803 **S. 45 : Capital gains-Crypto currency-Bitcoin-Virtual Digital Asset-Held for more than 3 years (Thirty six months)-Property of any kind-Taxable as capital gains-Not as income from other sources-Entitled to claim exemption under Section 54F of the Act-Finance Act, 2022 w. e. f. 01.04.2022, Section 2(47A) had been inserted thereby Virtual Digital Asset meaning was assigned and that included underlying assets Bitcoins-When there are two views possible, the view which is favorable to the assessee be considered. [S. 2(14), 2(47), 2(47A), 54F, 56(2)(x), 115BBH, 194S, Foreign Exchange Management Act, 1999. 2(h), 2(m), 2(q)].**

The assessee who was a salaried employee had purchased Bitcoin (crypto currency) during financial year 2015-16 and sold it during financial year 2020-21. He invested sale consideration in the purchase of property. The assessee filed return declaring long-term capital gain on sale of Bitcoin and also claimed exemption under section 54F. The Assessing Officer held that crypto currency is not a capital asset under section 2(14) and made it taxable under section 56 as income from other sources. On appeal, the Commissioner (Appeals) held that Crypto Currency (Bitcoins) was not an asset as per section 2(14), hence, the transfer as per section 2(47) as Long-Term Capital Gain is not applicable. Accordingly affirmed the order of the Assessing Officer. On appeal the Tribunal held that the assesseeewas not regularly dealing in purchase/sale of shares/ crypto currency. His intention was to hold for long term capital gain which was more evident from fact that assessee held crypto currency for more than 3 years. Finance Act, 2022 w. e. f. 01. 04. 2022, section 2(47A) had been inserted thereby Virtual Digital Asset meaning is assigned and that included underlying assets Bitcoins. Since crypto currency is specifically incorporated in statute as an asset, it means that even before 1-4-2022, crypto currency was an asset and gain on sale of crypto currency had to be taxed under the head capital gain and not under the head income from other sources. Accordingly, claim of deduction under section 54F was allowable to the assessee. Tribunal also held that when there are two views possible, the view which is favorable to the assessee be considered. Referred *CIT v. Vegetable Products Ltd (1973) 88 ITR 1992 (SC). [1973] Chief Commissioner of CGST v. Safari Retreats Pvt. Ltd. Civil Appeal No. 2948 of 2023 order dt. 03.10.2024 at page 32, para 25(d)*. (AY. 2021-22)

Raunaq Prakash Jain v. ITO (2024) 169 taxmann.com 298 /(2025) 233 TTJ 176 (Jodhpur) (Trib)

804 **S. 45: Capital gains-Loss-Short-term capital loss arising from cancellation of non-cumulative compulsory convertible preference shares-Disallowance of loss is proper.**

Held, that the Tribunal had held in the assessment year 2016-17 that the long-term capital loss declared by the assessee on sale of non-cumulative compulsory convertible preference shares could not be disallowed. The view taken by the Commissioner (Appeals) on this issue in the assessment year 2017-18 was proper. (AY. 2017-18, 2018-19)

Dy. CIT v. Reliance Industries Ltd. (2024)109 ITR 180 (Mum)(Trib)

S. 45: Capital gains-Non-Resident-Capital gains on sale of shares in Indian Company-Entitled to claim exemption-DTAA-India-Mauritius. [S. 112(1)(c) (iii), 147, R. 115A, Art. 13(4)] 805

Held that the Departmental authorities had failed to bring on record any cogent material to substantiate their allegations that the assessee was merely a paper company, and could not be treated as a genuine tax resident of Mauritius. There was nothing on record to suggest that the Departmental authorities disputed that the assessee had made investment in the shares which gave rise to the capital gains prior to April 1, 2017. That being the established factual position, the assessee was entitled to the benefit provided under article 13(4) of the tax treaty. The amount in dispute was not taxable in India. (AY. 2016-17)

CPI India Ltd. v. Asst. CIT (IT) (2024)109 ITR 340 (Delhi)(Trib)

S. 45: Capital gains-Share purchase agreement-Long term or short term-Conditional sale and only upon fulfilment of conditions, date of contract of sale was to be crystallized-Effective date of transfer would be date of receipt of sale consideration-Held shares for more than 12 months, shares were to be treated as long-term capital assets liable to long-term capital gains-Addition on account of capital gain is deleted-Corresponding penalty levied under section 271(1)(c) is also quashed. [S. 2(29A) 2(42A), 10(38), 271(1)(c)] 806

Assessee, a US tax resident, entered into a share purchase agreement on 20-4-2006 for sale of shares of a company to Infosys Technologies Ltd for a consideration. Sale was subject to terms and conditions of that agreement which included conditions precedent to sale and non-fulfilment of which conferred, upon parties, right to rescind contract-Assessee received portion of sale consideration on 30-6-2006. Assessee treated capital gain on sale of shares as long-term capital gain as date of acquisition of shares was 30-6-2005 and date of sale was 30-6-2006, being such shares held for more than 12 months. Assessing Officer treated date of execution of share purchase agreement i. e. 20-4-2006 as date of transfer of shares and since shares were held for period less than one year, he treated gain on transfer of shares as short-term capital gain. CIT(A) affirmed the order of the AO. On appeal the Tribunal held that where share purchase agreement stipulated conditions precedent to sale, non-fulfilment of which gave right to parties to rescind contract, effective date of transfer would be date of receipt of sale consideration and delivery of shares and not date of execution of share purchase agreement. Thus, assessee having held shares for more than 12 months i. e., from 30-6-2005 up to 30-6-2006, shares were to be treated as long-term capital assets and gain on transfer of shares was long-term capital gain. Appeal of aassesseewas allowed. As the addition on account of capital gain was deleted, corresponding penalty levied under section 271(1)(c) was also quashed. (AY. 2007-08)

Citicorp International Finance Corporation v. ACIT (IT) (2024) 206 ITD 241 (Mum) (Trib.)

807 **S. 45 : Capital gains-indexed cost-Value as per 1-4-1981-Capital loss-Indexed cost of acquisition of immovable property is higher than sale consideration-Long-term capital loss-Addition on account of LTCG is deleted. [S. 55(2)(i)]**

Assessee was 50 per cent owner of an immovable property, had received Rs. 50 lakhs as its share of sale consideration on sale of said property. For the purpose of calculating cost of acquisition, since property was acquired prior to 1-4-1981, assessee obtained report from Registered Valuer who had estimated fair market value of property at Rs. 54.09 lakhs and, thereafter, applying reverse method of indexation, calculated cost of property as on 1-4-1981 at Rs. 10 lakhs. Assessing Officer estimated indexed cost of acquisition at Rs. 5 lakhs (50 per cent of cost at Rs. 10 lakhs) and made an addition for long-term capital gain (LTCG). CIT(A) affirmed the view of the AO. On appeal the Tribunal held while calculating LTCG, no benefit of indexation had been given. Assessing Officer had himself considered cost of acquisition at Rs. 5 lakhs based on valuation report by Registered Valuer, which was fair market value of property (assessee's share) as on 1-4-1981. Assessing Officer had not made any efforts to get information about Circle rate of immovable property as on 1-4-1981. Since, fair market value of property as on 1-4-1981 as calculated by Registered Valuer had been accepted by Assessing Officer and there being no other evidence of fair market value of property as on 1-4-1981, cost of acquisition as on 1-4-1981 would be Rs. 5 lakhs (adopted by Assessing Officer) and indexed cost of acquisition would be Rs. 54 lakhs. Since indexed cost of acquisition was higher than sale consideration, it would result into a long-term capital loss. Additionwas deleted. (AY. 2016-17)

Millie Dey v. ITO (2024) 206 ITD 787 (Kol) (Trib.)

808 **S. 45 : Capital gains-Business income-Shares shown as investment in balance sheet and not as stock in trade-Period of holdings ranging from 3301 to 1352 days-Income from sale of securities is assessable as capital gains and not as business income. [S. 28(i)]**

Held that the assessee had shown shares in balance sheet as investments and not as stock-in-trade and moreover, shares sold were held by assessee for a long period ranging from 3301 days to 1352 days, income from sale of shares/securities/PMS/mutual funds, etc. to be treated as income under head capital gains and not business income. (AY. 2012-13)

DCIT v. Hero Investment (P.)Ltd. (2024) 204 ITD 29 (Delhi) (Trib.)

809 **S. 45 : Capital gains-Business income-Converted its stock-in-trade of shares into investment in shares-Profits arising from sale of such investment was to be taxed as capital gains, long-term or short-term and not as business income. [S. 28(i)]**

Assessee was engaged in business of trading in securities. On beginning of financial year, assessee converted its stock-in-trade of shares into investment in shares by passing resolution of board of directors. Accordingly, it claimed that profits resulting out of sale of such shares was to be treated as capital gains. The Assessing Officer held that profits from sale of shares was to be taxed as business income of assessee. On appeal the CIT(A) accepted the contention of the assessee to the extent of LTCGs, however, in respect of STCGs, he treated the same as business income. On appeal the Tribunal held

that since assessee in beginning of year converted its stock-in-trade into investment being shares with an intention to hold them for several years as investment, profits arising from sale of such investment was to be taxed as capital gains, long-term or short-term and not as business income. (AY. 2015-16)
Arunima Adcon Services (P.) Ltd. v. ACIT (2024) 204 ITD 146 (Delhi) (Trib.)

S. 45: Capital gains-Short term capital loss-Sale of shares-Alleged bogus sales-Shares traded on BSE-No independent enquiry conducted by AO regarding rigging up of the price of shares by the Assessee or his broker-Loss is allowed to be set off against capital gains. 810

The Assessee had claimed Short Term Capital Loss (STCL) on sale of shares of M/s Looks Health Services Ltd, which as per the AO was bogus in nature. According to the AO the transaction was sham as the Company was not financially viable, the price of the scrip had unusually skyrocketed without any financial or economic basis and unusually decreased, the script in that period were traded in bulk and most people who indulged in bulk trading were from Ahmedabad city only. However, the ITAT observed that the Assessee had carried out purchase and sale of shares on the Bombay Stock Exchange, as per the Assessment Order, no enquiry or investigation was carried out with any concerned authority regarding rigging up the price of Looks Health Services Ltd or by Assessee's broker. Therefore, there was no information or finding based on corroborative material available with AO that the price of shares were rigged. The principle of surrounding circumstantial evidence was also not strong enough to draw an adverse inference. Therefore, the order of CIT(A) was set aside. *PCIT v. Krishna Devi reported 126 taxmann.com 80* followed. (AY. 2014-15)
Varun Naginbhai Patel v. Dy. CIT [2024] 109 ITR 14 (SN) (Ahd)(Trib)

S. 45(2) : Capital gains-Conversion of a capital asset in to stock-in-trade –Investment-Contribution of land to developer for construction of commercial complex in place of cinema hall-CIT(A) was justified in holding that invocation of S. 45(2) by the AO was not sustainable. [S. 45] 811

Held that the Assessee-company engaged in the business of exhibiting films in a cinema hall handed over the land owned by it to the developer for the purpose of construction of a commercial complex in place of the cinema hall which did not tantamount to conversion of capital asset into stock-in-trade, more so as the constructed shops received by the assessee in the new commercial complex have been consistently shown under the head 'Investment' and, therefore, provisions of s. 45(2) are not applicable. Order of CIT(A) was affirmed. (AY. 2008-09, 2009-10)
Dy. CIT v. Man Prakash Talkies (P) Ltd (2024) 232 TTJ 673 (Jaipur)(Trib)

S. 45(4) : Capital gains-Distribution of capital asset-Dissolution of firm-Revaluation of asset-Crediting amount of said revaluation to partners' capital account-Transfer-Profit or gain arising from transfer is taxable in hands of firm-, Fair market value fixed by stamp duty value authorities should be taken as deemed full value of consideration for purpose of section 48 of the Act. [S. 45, 48, 68] 812

Assessee was a partnership firm. During course of assessment proceedings, Assessing Officer called upon assessee to furnish necessary capital account of partners and

explain substantial increase in partners capital account. Assessee could not substantiate increase in capital account of partners with necessary evidences, entire capital account was treated as unexplained credit and brought to tax under section 68. On appeal, CIT(A)deleted the addition under section 68 and invoked section. 45(4) of the Act and held that revaluation of asset held by partnership firm and crediting amount of said revaluation to partners' capital account was a transfer which fell under section 45(4) and any profit or gain arising from transfer needed to be taxed in hands of assessee firm. On appeal the Tribunal held that provision of Section 45(4) was applicable however, fair market value fixed by stamp duty value authorities should be taken as deemed full value of consideration for purpose of section 48 of the Act. (AY. 2018-19)
Shree Estates v. ITO (2024) 208 ITD 287/231 TTJ 628/242 DTR 105 (Hyd) (Trib.)

813 **S. 47(iii): Capital gains-Transaction not regarded as transfer-Gift-Company-Living Person capable of making gift-No attributes like love and affection is prescribed-Transfer of plots by Assessee by way of gift deed in favour of another company is valid gift-Not liable for capital gains tax-Person-Living Person. [S. 45,50C, Transfer of Property Act, 1882, S. 5, 122]**
Held that the Transfer of Property Act, 1882 considers a company not only as a person but literally speaking as a living person a person with life. The same expression person in section 5 is transplanted in section 122 of the 1882 Act, which defines a "gift". A cogent reading of sections 5 and 122 of the 1882 Act makes it clear that a company being a "living person" can transfer property by way of gift to another company. Further section 122 of that Act does not prescribe any attributes like "love and affection". There is no restriction in law against a company making a gift of its property to another company. A transfer without consideration when claimed as a gift is always a gift. Further section 47(iii) of the Act, specifically provides that any transfer of a capital asset under a gift is not regarded as a transfer. Therefore the transfer of plots by the assessee-company by way of executing gift deed in favour of R Ltd., was a valid gift and not liable for capital gains tax. Consequently the question of invoking the provisions of section 50C of the Act did not arise. There was no infirmity in the order passed by the Commissioner (Appeals). Relied on *DP World P. Ltd. v. DY. CIT(2014) 162 TTJ 446 (Mum) (Trib) Redington (India) Ltd. v. JT. CIT [2014)40 CCH 527 (Chennai) and DY. CIT v. KDA Enterprises P. Ltd(2015) 39 ITR 657/ 171 TTJ 1(Mum)(Trib)* (AY. 2013-14)
Gujarat Infrapipes P. Ltd. v. Dy. CIT (2024)111 ITR 47 (SN)(Ahd)(Trib)

814 **S. 47(iv) : Capital gains-Transaction not regarded as transfer-Capital gains -Subsidiary-Prerequisites provided to Indian subsidiary company-Assessee inadvertently offered receipt for levy of tax-Tax could not be levied as receipt did not constitute income-Income-tax leviable only in accordance with provisions of Income-tax Act-Admission by assessee is not conclusive. [S. 4, 45]**
Assessee transferred assets to its 100 percent subsidiary and surplus generated from the same was offered to tax in the return of income with a note providing details of transactions offered to tax. On appeal to the CIT(A), it was held that surplus generated by the assessee on transfer would be chargeable to tax as the asset was employed in the business. However, the Tribunal held that surplus generated on account of transfer of

asset could not be treated as income in view of the provisions of section 47(iv) of the Act. The Hon'ble High Court dismissed the revenue's appeal and held that the surplus generated on transfer could not be treated as income under section 47(iv). Further, merely because the assessee inadvertently offers a receipt for levy of tax, tax cannot be levied by the revenue if it is not otherwise constituting income of the assessee. (AY. 2012-13)

PCIT v. Ansal Properties and Infrastructure Ltd (2023) 152 taxmann.com 49 /(2024) 460 ITR 341 (Delhi) (HC)

S. 48 : Capital gains-Mode of Computation-Sale of shares gifted by promoters-BIFR cannot sanction any modification to scheme directing the Income tax department to give further tax concession without department being consenting to grant additional concession-SLP is granted against the order of High Court. [S. 45, Sick Industrial Companies (Special Provisions) Act, 1985, 3(1)(o), 17, 18, 22A, Art. 136] 815

BIFR declared respondent-company as a sick industrial company within meaning of section 3(1)(o) and appointed Central Bank of India as operating agency to prepare a rehabilitation package for company. Draft rehabilitation scheme was approved by BIFR. Said scheme had set out reliefs and concessions to be provided by income-tax department (ITD). Respondent sought an additional relief from ITD in respect of sale of shares, which were gifted by promoters of company as a part of their promoters' contribution, which had resulted in capital gains, chargeable to income tax. Said request was opposed by ITD on ground that it had granted all reliefs and concession as envisaged in scheme. BIFR by order modified said scheme, requiring ITD to consider grant further additional concession. On Writ by the ITD It was contended that obligation to extend further concessions could not be imposed on Central Government (ITD) without its consent. Court held that in instant case, ITD had not consented for extending any further concession and, therefore, order requiring ITD to consider grant of further concessions, could not be interpreted as making it obligatory on ITD to grant such concessions. Further, BIFR's order did not indicate that it had examined transactions, which had led to capital gains arising in hands of company or context in which additional concessions were sought. The order was set aside. ITD was not required to grant any further concession contrary to IT Act, to company. SLP is granted against the order of High Court.

Indian Plywood Mfg. Co. (P.) Ltd. v. PDGIT (2024) 296 Taxman 576 (SC)

Editorial : Refer, PDGIT v. Indian Plywood Mfg. Co. (P.) Ltd [2023] 153 taxmann.com 416 / [2023] 240 COMP CASE 282 (Delhi)(HC)

S. 48 : Capital gains –Mode of Computation-Transfer of securities-Management fees is allowable as deduction while computing capital gains. [S. 45] 816

Held that the management fee to a company for sale of securities and reduced same from short-term capital gains, was allowable as deduction since the management fee was linked to earning of short-term capital gain arising from transfer of securities. (AY. 2008-09)

Krishnamurthy Thiagarajan v. ACIT [2024] 164 taxmann.com 550 (Mum)(Trib)

817 **S. 48 : Capital gains-Mode of Computation-Cost of improvement-Payment made to builder-No reference in sales deed-Allowable as deduction. [S. 45]**
Held that the CIT(A) has allowed the cost of improvement in the computation of capital gains arising on the sale of property in the hands of the assessee's spouse (co-owner) and the Revenue has accepted the same, similar claim of cost of improvement cannot be disallowed in the hands of the assessee. Order of CIT(A) was affirmed. (AY. 2017-18)
ITO v. Prakash Ramkrishna Pophale (2024) 231 TTJ 49 (UO) (Pune) (Trib)

818 **S. 48 : Capital gains –Mode of Computation-Indexed cost-AO is directed to allow the two additional deductions while calculating the long-term capital gains in addition to the deductions already allowed by the AO in respect of indexed cost of acquisition of plot. [S. 45]**
Held that the AO was directed to compute the capital gains by taking the cost of construction and cost of renovation/improvement. (AY. 2017-18)
Sandiiya Suresh Dahivelkar v. ITO (2024) 231 TTJ 25 (UO) (Pune)(Trib)

819 **S. 48 : Capital gains –Mode of Computation-Brokerage or commission in connection with transfer-Disallowance cannot be made only because agreements with respect to commission services not submitted-Disallowance is not justified-Cost of improvement-New pleas could not be raised before Tribunal [S. 45]**
Held that during the assessment proceedings the assessee submitted details of payment regarding transfer expenses of Rs. 45 lakhs towards sales commission in connection with transfer of property containing therein the names of the parties and addresses, permanent account numbers, cheque numbers and dates and amounts. Copies of three invoices from the parties to whom commission was paid for the commission amount of Rs. 15 lakhs each were also produced and the bank statement of the assessee showed total payment of Rs. 45 lakhs in three entries of Rs. 15 lakhs each. The Assessing Officer had accepted that the assessee had submitted vouchers in support of transfer expenses and that payments were made through the assessee's bank account. Therefore the genuineness of the payment of Rs. 45 lakhs as transfer expenses in connection with transfer of property was established. The disallowance was made only because agreements with respect to commission services were not submitted. The commission recipients acted on oral instructions of the seller of the property. Undoubtedly, the commission had been paid through the bank account of the assessee. Therefore the disallowance was not justified. Tribunal also held that no plea to get the cost of construction valued through a Departmental Valuation Officer was ever taken before the Assessing Officer or the Dispute Resolution Panel. In the absence of any reasonable cause for not raising these pleas before the Assessing Officer or the Dispute Resolution Panel they could not be raised before the Tribunal. Consequently, the disallowance of cost of improvement of Rs. 31,86,363 (indexed cost Rs. 57,43,085) was justified and therefore sustained. (AY. 2021-22)
Sunil Kapoor v. ACIT (IT) (2024)111 ITR 64 (SN)(Delhi)(Trib)

S. 48 : Capital gains-Mode of Computation-Stamp duty and registration charges-Paid as per terms of agreement-Allowable as deduction-Remanded for verification. [S. 45] 820

The assessee, had shown long-term capital gain on sale of immovable property and also claimed deduction of stamp duty and registration charges in respect of society transfer fees paid by assessee out of aforesaid capital gain amount. Assessing Officer had disallowed claim of expenses on ground that assessee had not furnished supporting document regarding payment of aforesaid expenditure. DRP dismissed the appeal on the ground that Form No 35A was not signed by the Authorised representative. On appeal the Tribunal held that since the assessee had actually incurred said expenses as per terms and conditions of agreement and there was evidence of payment as reflected in copy of bank statement, Assessing Officer was directed to allow claim of assessee after verification of copy of agreement and copy of bank statement filed by assessee. Matter remanded. (AY. 2020-21)

Kishore Bhagwandas Ramnani v. ITO (2024) 111 ITR 148 / 206 ITD 491 (Mum) (Trib.)

S. 48 : Capital gains-Mode of Computation-Sale of shop-Cost of improvement-Construction cost of concrete bridge on culvert in front of shop-Allowable as deduction while computing capital gains. [S. 45] 821

Assessee sold his shop. He computed LTCG by claiming benefit of cost of improvement with respect to a concrete bridge constructed on culvert in front of shop. Assessing Officer denied said benefit of improvement cost on ground that assessee had been conducting business in shop, and construction got completed in financial year 2005-06. CIT(A) affirmed the order of the Assessing Officer. On appeal the Tribunal held that concrete bridge on culvert in front of shop was constructed so that customers could have direct access to shop in order to increase business turnover. Also source of construction, was duly explained that construction expense was incurred out of borrowed money. Since cost of construction had been disallowed by Assessing Officer merely on basis of presumption and nothing was brought on record to prove that cost of improvement had not been incurred, such disallowance would not be tenable. Tribunal directed the Assessing Officer allow the cost of improvement to shop by construction of bridge. (AY. 2019-20)

Joginder Singh v. ACIT (2024) 205 ITD 600 (Amritsar) (Trib.)

S. 48 : Capital gains-Mode of Computation-Cost of acquisition-Fair market value determined by Government valuer-Assessing Officer has no right to replace Government approved valuer's opinion with his own opinion. [S. 45, 50A, 55A] 822

Assessee had sold a flat during year under consideration and for computing cost of acquisition of this flat, assessee adopted fair market value as on 1-4-1981 based on valuation report of Government valuer. Assessing Officer after rejecting valuation made by valuer calculated cost of acquisition and thereby made an addition. CIT(A) up held the addition. On appeal the Tribunal held that since Assessing Officer has no power to replace valuer's opinion which is based upon facts and data available in public domain, with its own opinion, addition made by Assessing Officer is directed to be deleted. (AY. 2005-06)

Piramal Enterprises Ltd. v. DCIT (2024) 205 ITD 636/116 ITR 261 (Mum) (Trib.)

823 **S. 48 : Capital gains-Mode of Computation-Long term capital gains-Indexation-Cost of improvement-Failure to file necessary documents-Disallowance is affirmed. [S. 45]**
Assessee sold flat and claimed deduction of certain amount as index cost of improvement. Assessing Officer held that bills for cost of improvement were in name of Wings Travel Management India Pvt Ltd hence disallowed cost of improvement. CIT(A) also affirmed the disallowance. On appeal the Tribunal held that to claim cost of improvement, assessee had to establish that he had incurred expenditure for improvement of immovable asset. Since assessee had failed to file necessary documentary evidence for claiming cost of improvement and Assessing Officer had already allowed assessee's partial claim of cost of improvement to extent of bills which were in name of assessee, disallowance of cost of improvement was to be upheld. (AY. 2014-15)
Arun Tulshidas Kharat v. DCIT (2024) 204 ITD 618 (Pune) (Trib.)

824 **S. 48 : Capital gains-Mode of computation-Denial of indexed cost of improvement for the property sold-Expenses incurred for the renovation of house property –Merely because there is no written agreement expenses incurred cannot be disallowed. [S. 45]**
Assessee sold a property and claimed a deduction u/s 48 of the Act. The Assessee claimed renovation expenses of Rs. 9,50,000/-which was not allowed by the AO on account of insufficient documentation. The Assessee argued that being an NRI, payments were made through his mother's accounts, and the renovation was done by Mr. AlokLal through his firm M/s Fourth Dimension. The DRP, after a remand report, upheld the AO's decision, citing lack of evidence establishing the relationship between Fourth Dimension and AlokLal. The Assessee argued that the flat required significant renovation before being inhabitable, which justified the expenses claimed. The Assessee also emphasized the use of cheques for payments and cash withdrawals as evidence of genuine expenses. The ITAT after considering the submissions made by the Assessee, found merit therein. It accepted the explanation of the NRI Assessee and directed the AO to allow the indexed cost of improvement and recompute the capital gains. (AY. 2020-21)
Ashwin Kapur v. Asst. CIT [2024] 109 ITR 27 (SN) (Delhi)(Trib)

825 **S. 48 : Capital gains-Cost of improvement –Selective reading of sale agreement could not necessarily lead to disallowance-Expenses incurred to make house habitable allowable as deduction. [S. 45, 54, 54F]**
Assessee sold his residential house and claimed cost of improvement. It was held that since all improvements made necessarily lead to improvement in value of sale, assessee was entitled to deduction towards cost of improvement, thus allowing expenses incurred for installation of lift and other sundry expenses to make house habitable as cost of improvement. (AY. 2016-17)
Rajiv Ghai v. Asst. CIT(IT) [2024] 109 ITR 439 (Delhi)(Trib)

826 **S. 48 : Capital gains-Mode of Computation-Cost of improvement- Failure to prove the expenditure incurred-Disallowance of expenditure is affirmed.[S. 45]**
ITAT held that the assessee failed to file any evidence to prove that the assessee had incurred expenditure for improvement of impugned immovable asset. The bill which are

in the name of Wings Travel Management Pvt. Ltd. are not proof of expenditure incurred by the assessee for improvement of the flat owned by him. The appeal is dismissed. (AY. 2014-15)
Arun Tulshidas Kharat v. DCIT (2024) 204 ITD 618 (Pune) (Trib)

S. 49 : Capital gains-Previous owner-Cost of acquisition-Family settlement-Father acquired a property prior to 1-4-1981 and after his death said property was given to assessee by way of family settlement in 2003-Sale of property in 2007-Computing capital gain, indexed cost of acquisition was to be worked out with reference to 1-4-1981 and not with reference to date on which assessee acquired property by family arrangement, i.e., in 2003. [S. 45, 48] 827

Assessee's father purchased a property in 1963. After death of assessee's father, a settlement was arrived between assessee and his family members in 2003 wherein assessee became sole owner of property. Assessee sold property in 2007 and claimed long term capital gain after working out indexed cost of acquisition. Assessing Officer made additions treating acquisition of house w. e. f 2003 i. e date of memorandum of family settlement, working out indexed cost of acquisition from that date instead of cost earlier as on 1-4-1981. On appeal, the Commissioner (Appeals) partly allowed the appeal of the assessee. The Tribunal however allowed the appeal of the revenue. On appeal the Court held that there is no 'transfer' involved in a family arrangement. In instant case, there was a settlement arrived at between members of Hindu undivided family (HUF), accordingly, cost with reference to acquisition of property would have to be assessed as per section 49(1)(i). Accordingly cost inflation index was to be calculated with reference to year 1-4-1981 by treating acquisition of property as purchased by father of assessee on 1-4-1963 through registered deed dated 6-6-1963 and merely because family settlement was arrived in year 2003 would not make any difference. (AY. 2011-12)
Rajiv Mehra v. CIT (2024) 168 taxmann.com 273 /341 CTR 329 / 243 DTR 161 (P&H) (HC)

S. 50: Capital gains-Depreciable assets-Block of assets-Multiplex theatre-Sale of shop-Assessable as capital gain and not as business income-Owning-Operating. [S. 2(11), 28(i), 80IB(7A)] 828

Held, that the assessee lost both ownership and operating power over the shop which was an integral part of the multiplex theatre, on sale or transfer of the shop, and that the shop, though built by the assessee, was neither owned nor operated as an integral part of multiplex theatre at the time of accrual or receipt of income on sale or transfer of the shop. The rental income derived from the shop was assessed as business income and not income from house property. Since the shop, a depreciable asset, was sold, the gains derived therefrom had to be assessed as short-term capital gains in accordance with section 50.. The income derived from sale or transfer of the multiplex theatre (on lock, stock and barrel basis)is rightly assessed under the head Capital gains and not business income. Order of CIT(A) is affirmed. (AY. 2008-09)
PVS Multiplex (India) Ltd. v. ACIT (2024)114 ITR 27 (SN)(Delhi)(Trib)

829 **S. 50 : Capital gains-Depreciable assets-Block of assets-Sale of depreciable asset-Long-term capital asset-Short term capital gains-Tax is leviable at 20% as long term under seecti0n 112 of the Act and not at 30% which is applicable to short term capital gains. [S. 2(11), 2(29AA), 2(29B), 2(42A), 2(42B), 2(45), 43(6), 48, 49, 50(1), 50(2), 50A, 54, 54EC, 74, 112 (1)]**

Assessee held a depreciable asset. It sold the asset and had gains. It declared the gains as short term capital gains u/s 50, but paid tax at the rate of 20% as long term u/s 112. Assessing Officer disagreed with the view and levied tax at 30% which should be applied in short term gain and did not follow Bombay high court decision but followed ITAT order in own case in earlier year where gain on depreciable asset was assessed and taxed at 30% Since conflicting decision the appeal was referred to special bench. The question before the Special Bench was "Whether, on the given facts and circumstances of the case and in law, the capital gains under section 50 of the Act arising out of sale of long term capital asset is chargeable at the rate applicable to short term capital gains or rates applicable to long term capital gains under section 112 of the Act?" By a 2:1 majority, the Mumbai ITAT Special Bench held as under :

1. Fiction created by the legislature in sec 50 has to be confined to the purpose for which it is created
2. Section 50 was enacted with the object of denying multiple benefits to the owners of a depreciable asses, however that restriction is limited to the computation of capital gains and not to the exemption provision
3. if depreciation has been availed on long term capital asset, then the capital gains has to be computed in the manner u/s 50
4. For the purpose of granting exemption u/s 54, which is applicable to long term capital gains, the high court has held that for the purpose of exemption it is to be treated as long term capital gains
5. Once the high court has held that S. 50 does not convert a long term capital asset to a short term capital asset, then the rate of tax is applicable for the transfer of long term capital asset which has to be in accordance with S. 112. Deeming fiction of S. 50 cannot be imported in S. 112
6. Even in the context of set off against brought forward long term capital loss, high court in another case has held that deeming fiction is restricted only to the mode of computation of capital gains and does not change character of capital asset
7. S. 112 uses the word long term capital asset, and S. 50 only deems the capital gain as short term capital gain and does not deem the asset as short term
8. Thus tax on S. 50 assets, if held for more than 36 months would be taxed at 20% and applicable surcharge

Contra view. Dissenting view

1. If interpretation as above is accepted, then the entire provision of S. 50 will be rendered otiose. Then there is no purpose of keeping of S. 50 in the statute
2. The entire purpose of introducing the deeming fiction is not to grant concessional rate of tax to a depreciable asset as depreciation has been treated as a revenue expenditure
3. Section 50 was introduced with the objective of level playing field for both
4. Intention was not to allow Multiple benefits of deduction

5. The incentive was to sell a depreciable asset and buy another depreciable capital asset and this was the purpose of Bombay High Court in granting 54 E benefit
6. Section 112 cannot decide character of capital gain whether it would be short term or long term
7. If the view is to be followed,then an anomalous situation may arise, where the income under the head capital gains determine u/s 50 would be only as an ornamental item, undermining the purpose of exercise for computing short term capital gain Such an interpretation would contradict the legislative intent.

Contra view was not accepted by the majority who held that concessional rate of tax would be applicable on Section 50 capital gains too. (AY. 2000-01) (ITA No. 7544 of 2011 dt. 3-10-2024)

SKF India Ltd v. Dy. CIT (2024) 231 TTJ 977 / 242 DTR 161 (SB) (Mum)(Trib)

S. 50 : Capital gains-Depreciable assets-Block of assets-The profit or loss on this property is required to be computed under the provisions of ss. 41(2) and 50-More than 36 months-Entitle to exemption u/s 54F [S. 41(2), 54F] 830

Deeming fiction under s. 50 is restricted to the chargeability of gain as short-term capital gain but the asset remains a long-term capital asset and does not become a short-term capital asset by virtue of S. 50. Though the assessee is precluded from making the claim without making any claim in the return of income or revised return before the AO, the CIT(A) should have granted the claim of the assessee under S. 54. The issue is restored back to the AO to compute the income of the assessee considering the provisions of s. 41(2) and S. 50 and thereafter allow the claim of the assessee under s. 54F if other conditions are satisfied. (SMC) (AY. 2014-15)

Sonia Pathak Khanna v. ITO (2024) 230 TTJ 828 / 240 DTR 297 164 taxmann.com 607 (Mum) (Trib)

S. 50B : Capital gains-Slump sale-Sale of business as running concern-Sale is not of itemised assets-Not liable to tax-SLP of revenue dismissed. [S. 2(42C), 41(2), 45, 50(2), 50B(2), 55(2)(a), Art. 136] 831

The High Court dismissed the Department's appeal affirming the view of the Tribunal that the sale of business assets by the assessee was a slump sale and not an itemised sale and that since the cost of acquisition of the goodwill and know-how transferred could not be ascertained no capital gains could be taxed. SLP of Revenue is dismissed.

CIT v. Shri Ganga Nagar Bottling Co. (2024)462 ITR 32 (SC)

Editorial :CIT v. Shri Ganga Nagar Bottling Co. (2024)462 ITR 12 (Raj)(HC)

S. 50B : Capital gains-Slump sale-Sale of business as running concern-Sale is not of itemised assets-Transfer of goodwill and know-how did not give rise to capital gains as no cost of acquisition ascertainable-Not liable to tax. [S. 2(42C), 41(2), 45, 50(2), 50B(2) 55(2)(a), 260A] 832

The assessee-firm stopped production in its undertaking and entered into a contract packing agreement in terms of which the assessee agreed to sell its business assets relating to the bottling business at Ganga Nagar. Tribunal held that the sale of business assets was not an itemised sale and therefore, was not exigible to tax, that

the transaction was a slump sale and not an itemised sale and that the assets of goodwill and know-how were transferred and the cost of acquisition of these could not be ascertained. Dismissing the appeal the Court held that t when the agreement was entered into between the parties, the parties had recorded the total assets and no individual asset was required to be given in the memorandum of understanding by the independent party that the party was running the unit along with only the property and not any other liability. Therefore, the individual valuation which had been put forth in pursuance to the letter of the Assessing Officer on the basis of book value in the list of individual items was not established but taking into consideration the agreement between the parties the second value which had been rightly pointed out was for the purchaser for the purpose of arriving at a price of assets. The Tribunal had not committed any error in holding that the sale of business assets was a slump sale and not an itemised sale and that the assets of goodwill and know-how were transferred and the cost of acquisition of these could not be ascertained.
CIT v. Shri Ganga Nagar Bottling Co. (2024)462 ITR 12 (Raj)(HC)
Editorial : SLP dismissed, CIT v. Shri Ganga Nagar Bottling Co. (2024)462 ITR 32 (SC)

833 **S. 50C : Capital gains-Full value of consideration-Stamp valuation-Transfer of tenancy right-Provision of Section 50 C is not applicable-Revenue has accepted the decision of Shri Atul G. Puranik v. ITO (2011) 132 ITD 499 (Mum)(Trib)-Appeal of Revenue is dismissed. [S. 45, 49]**
On appeal by the Revenue dismissing th e appeal the Court held that provisions of section 50C of the Act is not attracted in case of tenancy rights. The Tribunal relied on the *Shri Atul G. Puranik v. ITO (2011) 132 ITD 499/11 ITR 120/ 141 TTJ 69 (Mum)(Trib).* Departmental counsel has accepted that decision in the case of Shri Atul G. Puranik (Supra) has been accepted by the Revenue hence no appeal has been preferred. (ITA No. 1821 of 2013 dt 12-10-2015)(AY. 2007-08)(ITA No. 6934/ M/ 2011/ dt 15-2 2013)
CIT v. Abdull Aziz Abdul Kadar (Bom)(HC) www.itatonline.org

834 **S. 50C : Capital gains-Full value of consideration-Capital asset-Stamp valuation-sale of leasehold rights in land-Industrial plot of land was allotted by MIDC under a lease agreement-Provision of S. 50C is not applicable-Value of industrial plot of land was less than actual consideration-First and second proviso is applicable. [S. 2(14), 45, 50C(1)]**
Dismissing the appeal of the Revenue,the Tribunal held that land or building or both referred to in S. 50C(1) do not include leasehold rights in land or building or both. Hence provision of S. 50C is not applicable. On the facts an industrial plot of land was allotted by MIDC under a lease agreement to the assessee and subsequently assessee transferred the said leasehold land to SM Industries for the remaining period of the lease in the year 2011 for a consideration of Rs. 2 crores. Therefor no addition could be made,assuming for a moment that transfer of a leasehold right in land is covered by S. 50C(1), the assessee is adequately safeguarded by first and second provisos to S. 50C as the stamp duty value of the said land at the relevant time was less than the actual consideration of Rs. 2 crores. (AY. 2017-18)
DCIT v. A. R. Sulphonates (P) Ltd. (2024) 229 TTJ 331 / 237 DTR 73 /161 taxmann.com 451(Kol) (Trib)

S. 50C : Capital gains-Full value of consideration-Stamp valuation-Transfer of tenancy rights-Permanent alternate accommodation-Provisions of section 50C would not apply in case of transfer of tenancy rights. [S. 45(1)] 835

Assessee was a tenant of a property. Assessee agreed to surrender his tenancy rights in lieu of allotment of a permanent alternate accommodation. Assessee was allotted only a part of area and on such deed of transfer, stamp duty was paid. Assessing Officer considered transactionas transferor of capital asset and added certain amount to income of assessee. CIT(A) affirmed the order of the AO. On appeal the Tribunal held that provisions of section 50C would not apply in case of transfer of tenancy rights. Addition is directed to be deleted. Followed *CIT v. Abdul Aziz Kadar ITA No. 1821 of 2013 dt. 20-8-21, (Bom)(HC), CIT v. CIT v. Mrs. Shirinbai P. Pundole (1981) 129 ITR 448 (Bom) (HC).* (AY. 2018-19)

Girdharlal Brothers v. Addl. CIT (2024) 209 ITD 285 (Mum) (Trib.)

S. 50C : Capital gains-Full value of consideration-Stamp valuation-Objection to valuation of property-Assessing officer is duty bound to refer matter to DVO in terms of Section 50C(2). [S. 45, 50C(2), 147, 148] 836

Assessee purchased a plot of land jointly at a purchase price of Rs. 8,15,000/-and later sold said plot for a consideration of Rs. 2,15,00,000/. Assessing Officer initiated re-assessment proceedings on basis of findings by Assessing Officer in case of co-owner wherein sale value of property was taken at Rs. 4,98,83,550/-as determined by Stamp Duty Authorities. On appeal, Commissioner (Appeals) allowed appeal of assessee holding that when assessee had objected to taking Jantri value as adopted by Stamp valuation officer, correct course of action by assessing officer should have been to refer matter to DVO for his expert opinion on matter, as per specific provisions of sub Section 2 of Section 50C. On appeal the Tribunal held that once assessee objects to value of property proposed to be adopted by Assessing Officer, then assessing officer was duty bound to refer matter to DVO in terms of Section 50C(2). Order of CIT(A) is affirmed. (AY. 2012-13)

ITO v. Ketaben Janakbhai Patel (2024) 208 ITD 445 (Ahd)(Trib.)

S. 50C : Capital gains-Full value of consideration-Stamp valuation-Applicability to sale of stock-in-trade-Conversion of capital asset to stock-in-trade-Section 50C is not applicable on sale of stock-in-trade-Reopening based on audit objection is invalid. [S. 147, 148] 837

The Tribunal allowed the appeal, holding that Section 50C, which applies to the valuation of capital assets based on stamp duty for computing capital gains, does not apply when the asset has been converted to stock-in-trade. In this case, the assessee had converted a capital asset into stock-in-trade in 2008 and sold it in 2009. The Assessing Officer reopened the assessment under Section 147, applying Section 50C based on an internal audit objection, and taxed the difference between the sale price and stamp duty value. The Tribunal held that the reopening was invalid as it was based solely on an audit objection, which cannot be considered "information" under Section 147. Moreover, on merits, Section 50C could not be applied since the property sold was stock-in-trade, not a capital asset. (AY. 2009-10)

Maheshwari Megaventures Ltd. v. Asst. CIT (2024) 112 ITR 5 (SN) (Hyd)(Trib.)

838 **S. 50C : Capital gains-Full value of consideration-Stamp valuation-No part of consideration was received in cheque before agreement-Sale consideration for capital gains should be assessed based on the date of registration rather than the agreement date-Reinvesting proceeds from sale of agricultural land in new agricultural land registered in the name of son-Denial of exemption is not valid. [S. 45, 54B]**

The assessee sold a piece of land pursuant to an agreement dated 29.09.2006. The sale deed was registered on 06.09.2010 for a sum, lesser than the stamp valuation of the land. Further the assessee invested the sale proceeds in purchasing new agricultural land in the name of his son on 20.06.2007 and claimed exemption under section 54B of the Income-Tax Act, 1961. The Assessee contended that the sale consideration should be based on the stamp valuation as of the agreement date (29.09.2006) rather than the registration date (06.09.2010). That the cheque for a part sum received on 29.09.2006, although post-dated to 09.10.2006, should be considered as part of the consideration received on the agreement date. The AO held that the sale consideration should be based on the stamp valuation as of the registration date (06.09.2010) because no part of the consideration was received through an account payee cheque or bank draft on or before the agreement date (29.09.2006). CIT(A) up held the order of the AO. On appeal the Tribunal held that the sale consideration should be based on the stamp valuation as of the registration date (06.09.2010) because no part of the consideration was received through an account payee cheque or bank draft on or before the agreement date (29. 09. 2006). The cheque received was post-dated and cleared only after the agreement date. As regards reinvesting proceeds from sale of agricultural land in new agricultural land registered in the name of son, denial of exemption is not valid. (AY. 2011-12)

Siddhulal Patidar v. ITO (2024) 111 ITR 541/228 TTJ 791/236 DTR 262 (Indore) (Trib.)

839 **S. 50C : Capital gains-Full value of consideration-Stamp valuation-Date of agreement and date of sale-Part payment of consideration was received prior to execution of agreement to sell As Shown By Bank Statement Of Assessee-Jantri rate applicable as on date of agreement to sell was much lower than agreed price-Entitled to benefit of first and second provisos to Section 50C-Addition is deleted. [S. 45]**

Held that the first proviso to section 50C specified that in a case where the date of agreement fixing the amount of consideration and the date of registration of the transfer of capital asset are not the same, the value adopted or assessed by the Stamp Valuation Authority or the date of agreement may be taken for the purpose of computing the full value of consideration for such transfer. The second proviso to section 50C specified that the benefit of the first proviso shall apply only in a case where the amount of consideration, or part thereof has been received by way of account payee cheque or by banking channels. Part payment of the consideration was received by the assessee prior to execution of the agreement to sell in the month of June 2011, which the bank statement of the assessee established. According to the jantri rate applicable as on August 1, 2011 (sale agreement date) was Rs. 64,82,526, whereas the assessee had received Rs. 1.94 crores, which was much more than the agreed price. The assessee was entitled to the benefit of first and second provisos to section 50C. Hence, the addition made by the Assessing Officer by invoking the provisions of section 50C is deleted. (AY. 2013-14)

Kamuben Natavarbhai Patel v. ITO (2024)111 ITR 44 (SN)(Surat)(Trib)

S. 50C : Capital gains-Full value of consideration-Stamp valuation-Transfer of leasehold rights-Section 50C, being a deeming provision, is not applicable in case of transfer of leasehold rights. [S. 45, 54, 54D, 147, 148] 840

The Assessing Officer based on AIR information that the assessee had sold a lease hold property and reopened the assessment as the assessee did not offer the capital gain. The AO assessed the entire sale consideration as per stamp valuation. CIT(A) affirmed the order of the AO. On appeal the Tribunal held that section 50C being a deeming provision is applicable only in respect of land or building or both and if capital asset under transfer cannot be described as land or building or both then section 50C will not apply. Therefore section 50C cannot be made applicable to leasehold rights in a land. (AY. 2011-12)

Shivdeep Tyagi v. ITO (2024) 207 ITD 568 (Delhi) (Trib.)

S. 50C : Capital gains-Full value of consideration-Stamp valuation-Not aware of the stamp valuation-Matter remanded to Assessing Officer with direction to confront material relied upon and take decision after examining reply. [S. 45] 841

Held, that the Assessing Officer is required to confront the material relied upon by him with the assessee before using it against the assessee. The contention of the assessee was that it was not aware that the stamp duty valuation was more than the sale consideration and the Assessing Officer did not confront the material with the assessee. The issue is restored to the Assessing Officer to confront the material that was relied upon by him to the assessee and after examining the reply given by the assessee, the Assessing Officer may take appropriate decision in accordance with the law. (AY. 2017-18, 2018-19)

Dy. CIT v. Reliance Industries Ltd. (2024)109 ITR 180 (Mum)(Trib)

S. 50C : Capital gains-Full value of consideration-Stamp valuation-Fair market value-Registered Valuer valued the property at less than sale consideration-Sale consideration and DVO is less than Stamp Valuation Authority-Deeming provision cannot be applied-Addition is deleted. [S. 45] 842

Assessee sold an immovable property for Rs. 5.50 crores. Registered valuer valued the property at Rs. 5,36,60,000. In course of assessment proceedings, Assessing Officer referred case to DVO for determining fair market value (FMV) of property. DVO determined FMV of property at Rs. 6.38 crores. Assessing Officer, however, adopted value determined by Stamp Valuation Authority (SVA) at Rs. 8.38 crores as deemed sale consideration under section 50C of the Act and added an amount of Rs. 2.98 crores as notional income. Commissioner (Appeals) upheld order of Assessing Officer. On appeal the Tribunal held that since difference in FMV as per actual sale consideration received by assessee and DVO was much lesser in comparison to difference in value as per Stamp Valuation Authority (SVA) and DVO, deeming provisions of section 50C cannot be applied. (AY. 2015-16)

Baba Export House v. ACIT (2024) 205 ITD 201 (Delhi) (Trib.)

843 **S. 50C : Capital gains-Full value of consideration-Stamp valuation-Agreement to sell properties on 14-8-2014 and received part consideration of certain amount-Agreement to sell those properties were registered on 30-12-2015, provisions of section 50C adopting value for stamp duty purposes as on date of sale deed i. e. 30-12-2015 could not be applied but value as on date of agreement/date of receipt of advance i. e. 14-8-2014 is to be applied. [S. 45]**

Assessee, an individual, sold two properties and received sale consideration of Rs. 3.95 crores. He offered Rs. 50,000 towards short-term capital gain (STCG) after adjusting cost of acquisition. Assessing Officer had adopted sale consideration as against market value adopted by SRO of Rs. 5.88 crores. He taxed difference of Rs. 1.93 crores as STCG after excluding adjustment of Rs. 50,000 which was already declared by assessee while filing return of income. Commissioner (Appeals) invoked provisions of section 50C(2) read with section 50C(3) and referred matter to DVO. DVO determined value of property at Rs. 8.23 crores as on 30-12-2015. Adopting value arrived at by DVO, Assessing Officer computed capital gains. On appeal the Tribunal held that since though agreement to sell properties was entered into by assessee on 30-12-2015, however, part consideration was received on 14-8-2014, provisions of section 50C adopting value for stamp duty purposes as on date of sale deed i. e. 30-12-2015 could not be applied but value as on date of agreement/date of receipt of advance i. e. 14-8-2014 was to be applied. Therefore, Assessing Officer was to be directed to adopt actual sale consideration declared and accepted on date of agreement entered into by assessee to compute capital gains. (AY. 2016-17)

Nageswara Rao Viswanadha v. ACIT (2024) 205 ITD 440 (Visakha) (Trib.)

844 **S. 54 : Capital gains-Profit on sale of property used for residence-Capital gains-Temporary structure-Putting together a structure of plywood sheets cannot be construed as constructing a residential house-Inspector had also reported that there was no electricity or water connection on the land and electricity was used by genset-Order of Tribunal rejecting the exemption is affirmed. [S. 45, 260A]**

Held that the question whether a residential house was constructed or not within the stipulated period is a question of fact. The assessee has not challenged the finding of the fact of the Tribunal on the ground that it is perverse, and rightly so. It is apparent from a plain reading of s. 54 that the allowance is available if the capital gains arising from a sale of residential property is utilised by the assessee for purchasing a residential property or constructing a residential house. It is obvious that the construction of a residential house would entail raising a construction for inhabitation as a residential dwelling unit. The Inspector's report, which the Tribunal had accepted is a makeshift guardroom made of plywood of 7 feet x 6 feet was found on the site and a similar room of plywood of 16 feet x 12 feet with a toilet attached was found at the said site. Putting together a structure of plywood sheets cannot be construed as constructing a residential house. The Inspector had also reported that there was no electricity or water connection on the land and electricity was used by genset. The first inspection report indicated that the exact location itself of the land was difficult to find as the area was vast and inhabited and comprised of hilly terrain. It is material to note that the structures made of plywood sheets were found to exist on the subject property during the second visit of the Inspector conducted on 7th Dec., 2017. No question of law arises for consideration

of this Court given the description of the subject property in question, as noted by the Tribunal in its order. The findings of the Tribunal cannot be assailed as perverse or manifestly erroneous. (AY. 2015-16)
Sandeep Hooda v. PCIT (2024) 169 taxmann.com 20 /341 CTR 933 / 244 DTR 273 / (2005)302 Taxman 208 (Delhi)(HC)

S. 54 :Capital gains-Profit on sale of property used for residence-Under construction flat-Possession has been completed within a three years from date of sale of residential house-Entitled to deduction. [S. 45, 260A] 845
The Assessing Officer disallowed the deduction claimed by assessee under section 54 of the act. Tribunal held that an apartment buyer agreement was entered into by assessee in respect of an under construction flat, since sale as well as possession of property in question were completed within a period of three years from date of sale of residential house, the assessee would be entitled to claim exemption under section 54. While dismissing the appeal of the Revenue the Court observed that view taken by Tribunal was in consonance with judgment of High Court in *Pr. CIT v. Akshay Sobti [2020] 423 ITR 321 (Delhi) (HC)*. Accordingly, no substantial question of law arose for consideration.
CIT (IT) v. Reema Chawla (2024) 298 Taxman 704 (Delhi)(HC)

S. 54 : Capital gains-Profit on sale of property used for residence-Co-Owner-Sale of old asset-Allowed the claim in the name of Co-0wner-Order of CIT(A) is affirmed. [S. 45] 846
Held that the claim for exemption under Section 54 was allowed in the name of the co-owner. The order of the CIT(A) was affirmed. (AY. 2017-18)
ITO v. Prakash Ramkrishna Pophale (2024) 231 TTJ 49 (UO) (Pune) (Trib)

S. 54 : Capital gains-Profit on sale of property used for residence-declared income under head "business or profession"-No declaration of capital gains-Denial of exemption by the AO, and the CIT(A) affirmed. [S. 28(i), 54F, 143(1)] 847
Assessee filed his return of income which was processed under section 143(1). Subsequently, the assessee raised a plea that due to mistake by his previous authorized representative, deduction under section 54F could not be claimed in return of income. Additional ground was raised before the CIT(A) claiming the exemption u/s 54 /54F. CIT(A) dismissed the additional grounds of appeal. On further appeal, the Tribunal held that no capital gain was disclosed in return of income. Income was declared under head "Profit and Gains from business or profession. Since there was no declaration of capital gain in return of income, the direction to The Assessing Officer to consider claim under section 54/54F would not arise. (AY. 2019-20)
Rajan Arputharaj Vincent Naveen v. ACIT (2024) 209 ITD 114 (Chennai) (Trib.)

S. 54 : Capital gains-Profit on sale of property used for residence-Cost of improvement-Expenditure incurred to make property habitable-Proper electrification, water facilities, wood work, glass work, etc-Allowable as deduction. [S. 45, 48] 848
The Assessee incurred certain expenditure to bring new house in habitable condition, it also claimed deduction for the same. The Assessing Officer denied assessee's claim on ground that capital expenditure incurred by assessee could not be included in the

cost of new property. The CIT(A) affirmed the order of the AO on the ground that the expenditure constituted renovation expenditure, hence not allowable as deduction. On appeal, the Tribunal held that the expenditure incurred for proper electrification, water facilities, wood work, glass work, etc. to make new house habitable, since the new house was purchased by assessee in inhabitable condition was allowable as deduction. Followed, *Rajat B. Mehta v. ITO (ITA No. 19 (Ahd) dt. 30-3-2012)* (AY. 2013-14)
Om Prakash Thakur v. ITO (2024) 208 ITD 50 (Delhi) (Trib.)

849 **S. 54 : Capital gains-Profit on sale of property used for residence-Sale deed refers that the possession of property was taken on 31-3-2015-With within period of one year before date of sale of original asset-Covenants in sale deed executed and registered were conclusive in absence of any evidence to contrary-Entitled for deduction. [S. 54F]**
The Assessee has sold two properties and claimed deduction under section 54/54F in respect of capital gains arising on sale of assets, citing purchase of new residential bungalow. The claim was denied by The Assessing Officer holding that deduction under section 54/54F cannot be claimed simultaneously in respect of same asset; and that the payment for purchase of new house was made prior to one year before sale of original asset. The CIT(A) affirmed the order of the AO. On appeal, the Tribunal held that the term 'purchase' employed in sub-section (2) of section 54, is not used in sense of legal transfer. Therefore, holding of a legal title within a period of one year was not a condition precedent for availing deduction under section 54. The recital of sale deed clearly stated that possession of property was taken on 31-3-2015 which was within the period of one year before date of sale of original asset. The covenants in sale deed which was duly executed and registered, were considered conclusive in the absence of any evidence to the contrary. Therefore, finding of The Commissioner (Appeals) that the document was fabricated was regarded as bald allegation and not sustained in eyes of law. The assessee is entitled for deduction under section 54/54F of the Act. (AY. 2016-17)
Ramdas Sitaram Patil v. ACIT (2024) 208 ITD 620 (Pune)(Trib.)

850 **S. 54 : Capital gains-Profit on sale of property used for residence-Not fulfilment of conditions-Denial of deduction not proper. [S. 45]**
Held that, for the purpose of claiming the benefit under section 54 of the Act, the assesse must purchase another residential house within a period of one year before or two years after the date of transfer of the old house, or construct a new residential house within a specified period of three years from the date of transfer of old house. Order of CIT(A) was according affirmed. (AY. 2017-18)
Mohan Lal Jain v. ACIT (2024)110 ITR 60(SN)) (Delhi) (Trib

851 **S. 54 : Capital gains-Profit on sale of property used for residence-Capital gains exemption-Date of possession vs. Date of agreement-Date of possession considered as date of purchase-Beneficial provisions to be liberally interpreted. [S. 45, 144C, 147]**
The Tribunal allowed the appeals filed by Sunil Amritlal Shah and Rita Sunil Shah, holding that the date of possession of new residential house, rather than the agreement date, should be considered for determining eligibility for deduction under Section 54.

In this case, the assessee sold a jointly owned flat on 10/2/2011 and claimed exemption under Section 54 for the purchase of a new residential property. While the purchase agreement for the new residential property was executed on 25/7/2009, the possession was granted on 2/2/2011. The Assessing Officer rejected the claim for exemption, taking the agreement date as the purchase date, which fell outside the prescribed one-year window before the sale. However, the Tribunal held that for under-construction properties, the date of possession is the relevant date for determining the purchase. As the possession was granted within the required period, the assessee was entitled to the exemption. Followed, *PCIT v. AkshaySobti (2020) 423 ITR 321 (Delhi)(HC) CIT v. Beena K. Jain(1996) 217 ITR 363 (Bom)(HC), Bastimal K jain v ITO [2016] 76 taxmann.com 368 (Mum) (Trib)*. (A. Y. 2011-12)
Rita Sunil Shah v. ITO (IT) (2024) 112 ITR 30 (SN) (Mum)(Trib.)
Sunil Amritlal Shah v. ITO (IT) (2024) 112 ITR 30 (SN) (Mum)(Trib.)

S. 54: Capital gains-Profit on sale of property used for residence-Utilization of other funds (apart from sale consideration) for constructing new residential house-Deduction under section 54 could not be denied. [S. 139(4) 852
The assessee is eligible to claim deduction under this section, even if a new residential house is purchased within one year before the date of transfer of original asset. This implies that assessee may utilize funds other than the sale consideration of original asset for investing in a new residential house. I t is not mandatory that only the sale consideration of original asset to be utilised for purchasing or constructing a new residential house. In the present case, since the assessee, has utilized other funds (apart from sale consideration) for constructing new residential house, the deduction u/s 54 cannot be denied. (AY. 2013-14)
Jignesh Jaysukhlal Ghiya v. DCIT [2024] 166 taxmann.com 40(Ahd)(Trib)

S. 54 : Capital gains-Profit on sale of property used for residence-Incomplete investment-Matter remanded back to Assessing Officer for de novo adjudication. 853
The Assessing Officer denied exemption claimed by the assessee. During appellate proceedings, assessee provided evidence to support her claim. However, despite the request from Commissioner (Appeals) for the remand report from Assessing Officer, no such report was received. The Commissioner (Appeals) concluded that entire long-term capital gains from sale had not been entirely reinvested in new residential property within prescribed period or deposited into Capital Gains Account Scheme. Consequently, he granted exemption under section 54 only to extent of actual investment made in new property, limited to assessee's share as a co-owner. The Tribunal held that there was no material available on record to show that assessee had been put to notice or granted an opportunity of hearing by Commissioner (Appeals) before arriving at aforesaid conclusion. Accordingly the matter was remanded to the file of the Assessing Officer for denovo adjudication. (AY. 2013-14)
Nilima Avinash Pradhan (Mrs.) v. ITO (2024) 207 ITD 109 (Mum) (Trib.)

854 **S. 54 : Capital gains-Profit on sale of property used for residence-Investment in under construction residential house-Expiry of three years from date of sale of original asset-Investment in under construction flat-Utilised only half amount of long term capital gains-Balance amount of long-term capital gain should be charged to tax under section 45 in year under consideration, being year in which period of three years from date of transfer of original asset expired. [S. 45, 54(2)]**

The Assessee sold a residential flat and earned long-term capital gain. The entire amount of Capital Gain was deposited under Capital Gain Account Scheme and the assessee claimed deduction under section 54. The Assessee booked an under-construction residential flat. Assessing Officer denied claim under section 54 on ground that, upon expiry of three years from date of sale of original asset, said residential flat was not constructed by builder and money invested was lying idle. On appeal, the CIT(A) affirmed the order of the AO. On further appeal, the Tribunal held that purchase of an under-construction flat by assessee would tantamount to investment in construction of a residential house for purpose of section 54. However, on the facts of the case, since assessee had only utilised half amount out of LTCG in new residential house, the balance amount of long-term capital gain should be charged to tax under section 45 in year under consideration, being year in which period of three years from date of transfer of original asset expired. Circular No 471, dated 15-10-1986, Circular No. 672, dated 16-12-1993. (AY. 2016-17)

Sheela Ramchand Uttamchandani v. ITO (2024) 207 ITD 267 (Mum) (Trib.)

855 **S. 54 : Capital gains-Profit on sale of property used for residence-Exemption allowable on full purchase cost of new residential property, including stamp duty, restricted to sale proceeds of original property. [S. 45]**

The Assessee sold property for Rs. 3,86,00,000 and bought new property for Rs. 18,50,00,000 plus Rs. 1,03,60,000 of stamp duty. The AO denied the exemption, which was affirmed by the CIT(A). On appeal, the Tribunal held that Commissioner (Appeals) mistakenly considered only stamp duty as new cost of the property and disallowed Rs. 2,82,40,000 as taxable long-term capital gain. Tribunal held that the full cost of new residential property, including stamp duty, is eligible for deduction under section 54, subject to limit of sale proceeds of original property. (AY. 2021-22)

Syeda Bibi Sadiqa (Smt.) v. DCIT (2024) 207 ITD 543 (Bang) (Trib.)

856 **S. 54 : Capital gains-Profit on sale of property used for residence-Non-resident-Non-filing of return-Furnishing of all details and documentary evidences in respect of sale of immovable property-Purchase of new residential flat-Denial of exemption is not justified. [S. 45, 139, 147, 148]**

The Assessee, a non-resident, sold an immovable property and claimed deduction under section 54. The Assessing Officer reopened assessment under section 147 and passed an ex parte assessment order treating entire receipt as unexplained short-term capital gain. The Assessee filed an appeal before Commissioner (Appeals) and furnished all details and documentary evidences in respect of sale of immovable property by her as well as in respect of new residential flat purchased by her, for claiming deduction under section 54. The Commissioner (Appeals) rejected the claim solely on the ground

that the assessee had not filed a return of income, and therefore, the deduction under Section 54 was not allowable. On appeal, the Tribunal held that when substantive law confers a benefit on assessee under a statute, it cannot be taken away by authority on mere technicalities. Therefore, benefit under section 54 could not be denied to assessee merely on ground that she did not furnish return of income claiming such deduction. (AY. 2010-11)
Seema Heera v. ACIT (OSD) (IT) (2024) 207 ITD 788 (Mum)(Trib.)

S. 54 : Capital gains-Profit on sale of property used for residence-Sale of immoveable property-Purchase of residential unit/ flat from a builder-Payment by instalments-Possession of flat was received within 3 years from sale of property-Agreement for sale of flat by builder is construed as agreement of construction-Possession is construed as completion of construction-Entitle to exemption. [S. 45] 857
The Assessee sold his immovable property on 11-11-2011 and earned long-term capital gain. The Assessee had also entered into an agreement to purchase new residential unit/ flat vide agreement to sell dated 11-10-2010 and made periodic payment of instalments. Possession of flat was received on 23-4-2012 which was within period of 3 years after date of sale on which capital gain had accrued. However, the Assessing Officer denied the claim, holding that the new residential property was "purchased" more than one year before the sale of the original asset, thereby not meeting the conditions of Section 54. CIT(A) also affirmed the order of the Assessing Officer. On appeal, the Assessee contended that Assessing Officer had misinterpreted facts. The exemption under Section 54 was claimed not on the basis of a "purchase" but on the construction of a new residential house. On appeal the Tribunal held that agreement for sale by builder to assessee could be construed as agreement of construction and date of grant of possession could be construed as completion of construction. The assessee had a window upto 11-11-2014 to construct house property, and possession was received on 23-04-2012, the Tribunal held that the conditions for exemption under Section 54 were fulfilled. Accordingly, the exemption was allowed. Relied on *PCIT v. Akshay Sobti [2020] 423 ITR 321 (Delhi) (HC)*. Circular No. 672 dated 16-12-1993, Circular No. 471 dated 15-10-1986) (AY. 2012-13)
Anjali Bhadoo (Smt.) v. ITO (2024) 204 ITD 124 (Delhi) (Trib.)

S. 54: Capital gains-Profit on sale of property used for residence-Purchase of new house in name of spouse-Eligible for deduction. [S. 45, 54F] 858
Assessee sold his property in India. Out of the sale proceeds, an amount of Rs. 1cr was invested into a new residential house in India. The residential house in which the investment was made by the assessee was registered in the name of his spouse. The assessee claimed deduction u/s 54 of the Act. The Assessing Officer disallowed the claim, which was affirmed by the CIT (A). On appeal, the Tribunal held that since the sale proceeds were duly invested in acquisition of new property within the due time, the assessee was eligible to claim deduction under Section 54 of the Act, even though the property was registered in the name of his spouse. (AY. 2020-21)
Simran Bagga v. ACIT [2024] 205 ITD 100 (Delhi) (Trib)

859 **S. 54 : Capital gains-Profit on sale of property used for residence-Purchase of residential unit from builder-Flat received within three years from sale of property-Date of possession shall be construed as completion of construction. [s. 45]**

The Assessee sold her immovable property and earned long term capital gain. The assessee has also entered into a new agreement to purchase the new residential flat vide agreement to sell and made periodic payment in instalments. Possession of flat was received within period of 3years after date of sale on which capital gain had accrued. The Assessee claimed exemption under section 54. The AO denied the exemption u/s 54 on the ground that the assessee did not purchase within one year before the date of sale—i. e., between 11.11.2011 and 11.11.2014.. On appeal, the Tribunal held that the assessee had a window up to 11.11.2014 to construct house property. The assessee received the possession of the flat on 23-4-2012 which is falls within three year from the date of of the sale, hence she was eligible for exemption (AY. 2012-13)

Anjali Bhadoo (Smt.) v. ITO (2024) 204 ITD 124 (Delhi) (Trib).

860 **S. 54B : Capital gains-Land used for agricultural purposes-Sufficient if in the two years, the land is used for agricultural purposes-Invested in capital gains scheme-Entitle to exemption. [S. 45]**

Held that whole parcel of the land was an integrated asset. Even the independent report called for by the AO from Halka Patwari also supports that the assessee had carried out the activities of agricultural land by growing Gwar crop. This independent enquiry made by the AO clinches the issue in favour of the assessee. In view of this, the capital gain earned by the assessee is chargeable to tax on sale of agricultural land and consequent exemption under s. 54B cannot be denied. The assessee purchased agricultural land out of the capital gain and deposited Rs. 60 lacs in capital gains scheme, which on withdrawal had been offered for taxation. The AO was directed to grant deduction under s. 54B to the assessee. (AY. 2013-14)

Arun Agarwal v. ITO (2024) 232 TTJ 422 / 243 DTR 257 / 38 NYPTTJ 1207 (Jodhpur)(Trib)

861 **S. 54B : Capital gains-Land used for agricultural purposes-Land purchased in name of Assessee's wife-The AO was directed to allow the exemption. [S. 45]**

The Assessee sold an agricultural land and claimed exemption under section 54B on the ground that he purchased another piece of agricultural land. AO denied the exemption as he noted that said land was purchased by the assessee in his wife's name.

However, relying on the decision of the Tribunal in the case of Ashok Kumar S/o Tej Pal Singh v. ITO, [ITA No. 7460/Del/2018, dt. 28-12-2022], it was held that deduction under section 54B/54F is available in cases, where investments are made in property purchased in name of wife. Accordingly, AO was directed to allow deduction under section 54B to assessee. [ITA No. 2265/Del/2023, Dt. 08/11/2023] [AY 2011-12]

Ravinder Kumar v. ITO (Delhi)(Trib.) (UR)

S. 54B : Capital gains-Land used for agricultural purposes-Entitled to exemptions even if the new land is registered in the name of his son-Investment by assessee in new land from sale proceeds of old land, even if made before registration of sale-deed, was eligible for exemption. [S. 45] 862

The Assessee contended that the investment in new agricultural land, even though made in his son's name and before the registration of the sale deed, should qualify for exemption under section 54B. While the revenue contended that the exemption under section 54B should not be allowed because the new land was purchased in the name of the assessee's son and not in his own name. And that the investment in new land was made before the registration of the sale deed, which does not comply with section 54B requirements.

The Hon'ble Tribunal ruled in favor of the assessee holding that the investment in new agricultural land qualifies for exemption under section 54B even if it is registered in the name of his son, provided that invstment was made from the sale proceeds of the old land. The Hon'ble Tribunal further held that exemption under section 54B is allowable even if the investment made by assessee in new land from sale proceeds of old land, was made before registration of sale-deed, (AY 2011-12)

Siddhulal Patidar v. ITO, (2024) 111 ITR 541 /228 TTJ 791/236 DTR 262 (Indore) (Trib.)

S. 54B : Capital gains-Land used for agricultural purposes-Sale consideration for purchasing new agricultural land-Capital gain is exempt from tax-Order passed under section 154 denying the claim is quashed. [S. 2(14)(iii) 154] 863

The Assessee sold agricultural land during year and utilized total sale consideration for purchasing new agricultural land during year. Assessing Officer initially allowed the claim. Thereafter the Assessing Officer passed a rectification order under section 154 disallowing the claim. CIT (A) affirmed the order of the Assessing Officer. On appeal, the Tribunal held that, after examining Notification No. S O 9447 (File No. 164/3/97-ITA. I), dated 6-1-1994 and details of sale deeds as well as certificate issued by Gram Panchayat it was clear that agricultural land sold during year did not fall within definition of capital asset as provided under section 2(14)(iii), capital gain arising from sale thereof was exempt from tax. Even if agricultural land was considered as capital asset, the assessee would still be entitled for exemption under section 54B for total purchase price of new agricultural land or long-term capital gain arising from sale of agricultural land, whichever was lower. (AY. 2013-14)

Achhelal Yadav v. ITO (2024) 205 ITD 56 (Kol.)(Trib.)

S. 54B : Capital gains-Land used for agricultural purposes –Investment in new agricultural land-Loan was repaid after sale consideration was received-Order of CIT(A) deleting the addition is affirmed-Cash credits-Matter remanded to the Assessing Officer. [S. 45] 864

Assessee purchased lands at Dhanelli and claimed deduction u/s 54B. Assessing Officer disallowed the claim on the ground that the land at Dhanelli had been purchased either on or before the date of transfer of the agricultural land at Sejbahar, and therefore, the conditions of section 54B were not satisfied. The Assessee explained that the possession of the original land was handed over to the buyer and the consideration received was

utilized for purchasing new land. CIT(A) allowed the exemption u/s 54B. On appeal, The Tribunal affirmed the order of the CIT(A). As regards the loan transactions the matter is remanded to the Assessing Officer. (AY. 2015-16)
ITO v. Rekhchand Jain (2024) 204 ITD 333 (Raipur)(Trib)

865 **S. 54EC : Capital gains-Investment in bonds-Before date of transfer-Deduction is allowed if the investment is made from the advance received from sale of capital asset. [S. 45]**
Held that investment made in specific bonds before date of transfer of capital asset is allowable as deduction, if the investment is made from the advance received on sale of capital asset.
(AY. 2009-10)(ITA No. 407/ Ahd/ 2024 dt. 23-10 2024)
Shital Piyushkumar Patel v. ITO (2024) Chamber's Journal-December-P. 100 (Ahd)(Trib)

866 **S. 54EC: Capital gains-Investment in bonds-Investment in bonds-Sale of office premises-Depreciable assets-Six months mentioned in section 54EC is to be recorded as six British calendar months-Eligible for deduction in respect of both investments. [S. 2(11), 45, 50]**
Assessee has sold office premises on 16-12-2013. He invested Rs. 50 lakhs in REC Bonds on 31-3-2014 and another Rs. 50 lakhs on 30-6-2014. The Assessing Officer held that the assessee was eligible for deduction only in respect of first investment which was made on 31-3-2014. The Assessing Officer held that amendment with effect form 1-4-2015 is clarificatory in nature. On appeal, the CIT(A) enhance the income by holding that, the assessee has sold the depreciable asset resulting in short term capital gain hence not eligible for deduction under section 54EC of the Act. On appeal, the tribunal held that, the investment made by the assessee was within period of six months hence both the investments are eligible for deduction under section 54EC of the Act. (AY. 2014-15)
Shangar v. DCIT [2024] 205 ITD 126 (Ahd) (Trib)

867 **S. 54F : Capital gains-Investment in a residential house-Surrender of tenancy-Stamp duty value-Unexplained investment-Show cause notice-Not an empty formality-Entitle to exemption-Assessment order is quashed. [S. 45, 56(2)(x)(a), 56(2)(x)(b), 115BBE, 143(3), 144B Art. 226]**
The assessee and his brother were tenants since April 1, 2013, of a flat and garage in certain building. They paid rent of Rs. 5,000/-per month. A tenancy agreement was executed on August 5, 2014. They received possession of a flat on the 15th floor of the new building on February 19, 2020. The stamp duty value of the new flat was Rs. 11,68,99,000/-. The assessee claimed that this amount was received on surrendering their tenancy rights and invested in the new flat, entitling them to deduction under Section 54F. The Assessing Officer passed the assessment order on September 29, 2022, proposing to treat the entire stamp duty value of the new flat as unexplained investment under Section 69 and charged it to tax under Section 115BBE. In a writ petition, the High Court held that issuance of show cause notice is not an empty formality and its purpose is to give reasonable opportunity to affected persons to effectively deal with allegations in show cause notice and A. O. is required to execute this power properly. Since, Assessing Officer did not issue a show cause notice to taxpayer regarding treatment of stamp duty

value under section 69. Furthermore, show cause notice issued earlier was also defective inasmuch as even though it had reference to section 56(2)(x), it did not mention whether Assessing Officer proposed to treat stamp duty value as deemed income of assessee under clause (a) or clause (b) of section 56(2)(x) of the Act. Assessment order was quashed for violation of principles of natural justice. (AY. 2020-21)
Vivek Jaisingh Asher v. ITO (2024) 299 Taxman 222/ (2025) 343 CTR 354 / 248 DTR 108 (Bom.)(HC)

S. 54F : Capital gains-Investment in a residential house-Entire actual consideration was invested in purchase of under consideration of residential house-Capital gain is exempt-Provision of section 50C is not applicable. [S. 45, 48, 50C, 54F(4)] 868
Held that when the entire actual consideration was invested in purchase of under consideration of residential house the capital gain is exempt. Provision of section 50C is not applicable. (AY. 2013-14) (ITA No. 379(JP) of 2018 dt. 30-5-2023)
Lalit Kumar Kalwar v. ITO (2023) 106 ITR 373 (Jaipur)(Trib)

S. 54F : Capital gains-Investment in a residential house-Investment in joint name-Exemption cannot be denied on the ground that the new property has been purchased in the joint names of the assessee and his son. [S. 45] 869
Held that capital gains arising on the sale of residential house, which was in joint ownership of the assessee and his wife must be divided and assessed in the assessee's hand alone. Exemption is allowable to the extent of the amount invested in the new property including the stamp duty paid thereon; exemption cannot be disallowed on the ground that the new property was purchased in the joint names of the assessee and his son. (AY. 2011-12)
Abdul Nayab Shaikh (Deceased) L/H Abdul Samad Shaikh v. ITO (2024) 230 TTJ 13 / 238 DTR 353 / 167 taxmann.com 381 (Mum)(Trib)

S. 54F : Capital gains-Investment in a residential house-Acquired 60 percent share in a flat owned by her husband-Entitle to benefit of on sale consideration received on sale of shares. [S. 45] 870
Held that the assessee has acquired 60 percent share in a flat owned by her husband. Hence, the assessee was entitle to benefit of on sale consideration received on sale of shares. (AY. 2015-16)
Deepa Pamnani (Ms) v. ITO (2024) 230 TTJ 897 / 241 DTR 170 / [2025] 170 taxmann.com 163 (Mum) (Trib)

S. 54F : Capital gains-Investment in a residential house-Construction of first floor with separate kitchen, electric connection, water connection, etc-Entitle to exemption-Amount received back-Cancellation of deal of property-Addition is deleted. [S. 45, 68] 871
Held that the Assessee having constructed first floor on the existing ground floor which has separate kitchen, electric connection, water connection, etc., was eligible for exemption under S. 54F. The Tribunal also held that the amount received back due to cancellation of deal of property could not be treated as income, and therefore,, the addition was deleted (AY. 2012-13)
Chandra Bhavani Sankar v. ITO (2024) 231 TTJ 1072 / 243 DTR 9 / 38 NYPTTJ 1068 (Chennai)(Trib)

872 **S. 54F : Capital gains-Investment in a residential house-Notarized Will-Sale of inherited jewellery-The Assessing Officer cannot ask the evidence beyond time specified in R. 6F(5)-Directed the assessee to reconcile the quantum of jewellery with the valuation report, matter remanded to the CIT(A) [S. 45, 56, R. 6F(5)]**

The assessee sold the jewellery which she has inherited from her late mother-in law. Copy of the Notarized Will was also furnished. The assessee claimed exemption under section 54F of the in respect of Long term capital gains on sale of jewelley. The AO assessed the sale consideration as income from other sources on the ground that the assessee has failed to furnish the evidence as regards acquisition of jewellery by will. On appeal, the CIT(A) partly allowed the claim. On further appeal, the Tribunal held that Assessee having produced the notarised Will of her deceased mother-in-law whereby she has inherited a portion of jewellery of her mother-in-law, and the assessee having shown the said inherited jewellery in her Wealth Tax return filed after the first year of inheritance, it has to be accepted that there existed a long-term capital asset and the subsequent sale resulted into long-term capital gains. The Tribunal also held that, the Assessing Officer was not justified in demanding evidence beyond time specified in R. 6F(5)(i. e six years). Since the valuation report obtained from Nayarathan Jewellers (P) Ltd valuing the jewellery as on 31st March, 2015 does not tally with the quantity and weights of jewels inherited through the Will, The Tribunal directed the assessee to reconcile the quantum of jewellery with the valuation report issued by Nayarathan Jewellers (P) Ltd, issue is remitted to the CIT(A) to decide the same afresh. (AY. 2016-17)

ACIT v. Sharada Narayanan (2024) 229 TTJ 774 / 238 DTR 229 (Bang)(Trib)

873 **S. 54F : Capital gains-Investment in a residential house-Jointly owning 16-67% rights in six flats-Own does not include partly owned-Exemption cannot be denied. [S. 32, 45]**

The AO denied benefit of section 54F on the ground that the assessee is owning 16. 67 per cent rights of six flats and hence was already an owner of a residential house. CIT(A) affirmed the order of the AO. On appeal the Tribunal held that, exemption cannot denied on the ground that the assessee jointly owned 16. 67 per cent rights in six flats. The Tribunal held that, joint ownership/part ownership cannot be treated as absolute ownership in the absence of any specific words in the section 54F of the Act. Followed *ITO v. Rasiklal N. Satra(2006) 100 TTJ 1039/ 98 ITD 335 (Mum)(Trib), Ashok G. Chauhanv. ACIT(2019) 200 TTJ 659/ 105 taxmann.com 204 (Mum)(Trib), Anant R. Gawande v. ACIT (2022) 144 taxmann.com 127 (Mum)(Trib)* (AY.2016-17)

Abdul Rahim Suleman Ghaswala v. Dy. CIT (2024) 227 TTJ 392 / 233 DTR 297 (Mum) (Trib)

874 **S. 54F : Capital gains-Investment in a residential house-Investment in non-residential property-Mosque, Orphanage School and Staff quarters-Not entitle to deduction-No pro rata deduction is permissible. [S. 45]**

The Assessee constructed ground plus three floors building. The nature of construction is mentioned as Mosque, Orphanage School and Staff quarters. The AO denied the exemption stating that the investment was not made in a residential house. On appeal the CIT(A) allowed proportionate disallowance. On appeal by the Revenue the Tribunal held that, the third floor of the property is being used for the residence of the assessee

is contrary to the statement of the assessee filed before GHMC seeking regularization of the property. Said statement clearly shows that the assessee has not used the property for residential purpose within the time granted by the statute and further there is no evidence to show that the assessee has invested money in raising of construction of a residential house. Accordingly, the assessee is not entitled to any relief. The Tribunal also held that there cannot be any exemption on pro rata basis. Order of CIT(A) is set aside. (AY. 2013-14)

ACIT v. Iqbal Ali Khan (2024) 227 TTJ 730 / 239 DTR 233 / 158 taxmann.com 377 (Hyd) (Trib)

S. 54F : Capital gains-Investment in a residential house-Allotment letter-Flat under construction-Date of issue of allotment letter more than 36 months-Long term capital gains –No bar on appellate authorities to entertain claim-Directed to allow deduction after verification. [S. 2(29A), 45, 139] 875

In this case, the letter of allotment was issued by the builder to the assessee on February 15, 2010, granting the right to own a specific flat in a project to be undertaken.. This created a booking right, i. e., the right to purchase the flat and obtain title. The terms and conditions from the letter of allotment dated February 15, 2010 were subsequently recorded elaborately in the agreement to sell registered on May 13, 2014. The assessee had not defaulted on the terms and conditions of the letter of allotment. The assessee had made all the payments as required under the letter of allotment which had been duly acknowledged in the subsequent registration of the agreement to sell. On transfer of the booking rights, the assessee claimed that the capital asset was held for more than 36 months, and hence the gain should be treated as long-term capital gain. The Tribunal held that the holding period should be computed from the date of the allotment letter (February 15, 2010), not from the date of registration. As the allotment conferred a right to acquire the property, such a right constitutes a capital asset, and its transfer would result in long-term capital gains, since the period of holding exceeded 36 months. Further, the Tribunal observed that there is no bar on appellate authorities from entertaining a fresh claim under section 54F if the necessary conditions are met. The assessee had made an investment in another residential flat and claimed deduction under section 54F. The Tribunal remanded the matter to the Assessing Officer for the limited purpose of verifying whether the conditions of section 54F were met, and directed the AO to allow the exemption accordingly after due verification. (AY. 2016-17)

Minaxi Mahesh Pawani (Deceased) v. ITO (IT) (2024)113 ITR 38 (SN)(Mum)(Trib)

S. 54F : Capital gains-Investment in a residential house-Sale of vacant land-Purchase of house property –Time limit-Delay in registration-Beyond prescribed time limit of 24 months-Denial of exemption is not valid. [S. 45] 876

Assessee sold vacant land in October/November, 2016 and invested the sale consideration in the purchase of house property. The entire sale consideration was paid on 14-11-2016 and possession of property was also given to assessee on same day itself. The assessee subsequently let out said house property and offered rental income earned in her return of income. The AO denied the exemption on the ground that, the property was purchased beyond the stipulated period of 24 months from the date of sale of the land. The CIT(A) allowed the exemption. On appeal the Tribunal held that, merely

because registration of house property (new) was delayed or done beyond prescribed time limit of 24 months from date of disposal of capital asset, it could not be a ground to deny exemption. (AY. 2017-18)
ACIT v. Siva Jyothi Palam. (2024) 209 ITD 352/232 TTJ 514 /243 DTR 265 (Visakha) (Trib.)

877 **S. 54F : Capital gains-Investment in a residential house-Purchase of two adjacent flats –Revised plan-Used as a single unit-Entitle to exemption. [S. 45]**
Assessee purchased two adjacent flats and claimed exemption under section 54F. The CIT(A) allowed the claim in respect of one house on pro rata basis and directed the AO to re-compute the deduction accordingly. On further appeal, the Assessee contended that after purchase of two flats, revised plan was approved by MHADA wherein two flats were considered as one single unit, with one kitchen functioning as one household. Therefore, necessary criteria under section 54F stood fulfilled. The Tribunal held that revised plan clearly established the intent to use the two flats as a single residential unit. There was nothing on record brought by revenue other than arguing that assessee originally entered into two independent agreements for purchase of flat. The Tribunal emphasized that- so long as house was used by assessee as one single unit, conditions relevant for claiming deduction under section 54F were fully satisfied. Hence, the exemption wasallowed. (AY. 2017-18)
Nakul Aggarwal v. ACIT (2024) 209 ITD 342 (Mum) (Trib.)

878 **S. 54F : Capital gains-Investment in a residential house-Ownership of property-Sale of ancestral property-Invested in for construction of a residential house on a plot of land which was in name of her husband-Eligible for exemption. [S. 45]**
Assessee earned capital gain on sale of ancestral property and invested same for construction of a residential house. Assessee claimed deduction under section 54F. Assessing Officer disallowed the claim on ground that, the plot of land was not registered in the name of the assessee, rather it was in exclusively registered in the name of her husband. The CIT(A) upheld the order of the AO. On further appeal the Tribunal held that, there was no impediment in claiming deduction under section 54F on investment of capital gain in residential house, which was in name of assessee's husband. Hence,the assessee was eligible for exemption and the deduction under section 54F was to be allowed. (AY. 2020-21)
Rekha Rajendra Shah v. NFAC (2024) 209 ITD 393 (Surat)(Trib.)

879 **S. 54F : Capital gains-Investment in a residential house-Purchase of residential plot for construction of house-Exemption can not be denied on ground of technical constraint that no permission was granted by ADDA to transfer land in name of assessee till date of investment-Income from other sources-Value of land-Difference in value of land given by DVO and value of land mentioned by assessee in transfer deed was less than 5 per cent, no addition was warranted on account of differential amount between value of land given by DVO and value of land. [S. 45, 56(2)(viib)]**
Assessee transferred her long-term investment in shares and in lieu thereof received land of equal value and claimed exemption u/s 54F of the Act. The Assessing Officer disallowed exemption on ground that land upon which house was constructed could not have been transferred without permission of ADDA and no such permission was

granted till date and therefore, there was no transfer of land in favour of assessee. The CIT(A) affirmed the order of the AO. On appeal the Tribunal held that, although deal was finalized on 3-8-2012, due to certain legal/technical constraints imposed by ADDA the permission of transfer of land in favour of assessee could only be granted on completion of construction of property. Therefore, due to technical compulsions, house was constructed first and then land was transferred in name of assessee. The Tribunal concluded that, the investment in purchase of land and construction of house on it was made within stipulated period, denial of exemption under section 54F of the Act is not justified. As regards to addition under S. 56(2)(vii)(b) the difference in value of land given by DVO and value of land mentioned by assessee in transfer deed was less than 5 per cent, no addition was warranted on account of differential amount between value of land given by DVO and value of land. (AY. 2014-15)
Basabdutta Dutta v. ITO (2024) 208 ITD 30 (Kol)(Trib.)

S. 54F : Capital gains-Investment in a residential house-One house-Position prior to 1-4-2015-Joint Development Agreement (JDA)-14 apartment units-Amendment to section 54F by the Finance No. 2 Act, 2014 makes it clear that with effect from 1-4-2015, deduction would be admissible for one residential unit only by replacing word "a" with "one" and prior to amendment to section 54F, assessee is entitled to benefit of section 54F in respect of all units received by assesse. [S. 45] 880

Assessee, along with his four brothers, had entered into a Joint Development Agreement (JDA) with NCC and assessee received 15 constructed apartment units. Assessee claimed exemption under section 54F in respect of capital gain arising from sale of a residential property and invested same in 15 apartment units. The Assessing Officer disallowed claim of deduction under section 54F in respect of 14 apartment units and allowed benefit of investment only on 1 apartment unit. The AO interpretated the phrase "a residential house" under section 54F as existing during relevant assessment year to mean only one residential unit. CIT(A) allowed the assessee's claim. On appeal, the Tribunal held that amendment to section 54F being prospective in nature, would apply w. e. f. 1-4-2015, and consequently, assessee would be entitled to benefit of section 54F in respect of all units received by assessee pursuant to JDA. (AY. 2008-09)
ACIT v. Narayanappa Ramanna. (2024) 207 ITD 1 (Bang) (Trib.)

S. 54F : Capital gains-Investment in a residential house-Joint Development agreement-Disputes-Delay of seven years-Denial of exemption is affirmed. [S. 45] 881

Joint Development agreement (JDA) was entered into by assessee along with other owners on 31.5.2016 for development of a land wherein assessee was eligible to get one residential villa within 36 months of JDA. The plans were approved on 17. 04. 2017 and Construction was to be completed within 36 months i. e. by 31.05.2019. However, litigation was filed by partners of developers against each other on 21.10. 2021 and construction was eventually completed in November 2023. The Assessee claimed exemption under section 54F. The Assessing Officer held that the assessee had not acquired legal title/registered residential house/villa in her name within prescribed time. Section 54F stipulates that assessee should purchase house within two years or construct new house within three years hence denied exemption under section 54F. On appeal the Tribunal held that dispute among partners of developers arose only after

25. 10. 2021 which was beyond period of 3 years from date of transfer of capital assets which happened pursuant to JDA on 31.5.2016. There was a delay of more than 7 years in completing construction as against period of years under section 54F. Explanation given by assessee that there was dispute among partners was not substantiated. No evidence had been filed to demonstrate that any serious efforts were made by assessee to ensure due completion of construction within time granted by statute. Accordingly, the Tribunal held that the Assessing Officer is justified in denying exemption under section 54F of the Act. (AY. 2017-18)
Lekha Reddy Mettu (Smt.) v. ACIT (2024) 207 ITD 244 / 232 TTJ 109/242 DTR 265 (Hyd) (Trib.)
Sudhakar Reddy Mettu v. ACIT (2024) 207 ITD 244/ 232 TTJ 109/242 DTR 265 (Hyd) (Trib.)

882 **S. 54F : Capital gains-Investment in a residential house-Additional evidence-Matter restored back to CIT(A) for fresh adjudication. [S. 250]**
Assessee claimed deduction under section 54F against said long term capital gain declaring that he had invested same in a house property in his wife's name. The assessee failed to produce evidence with regard to investment in house property out of sale proceeds of land. Assessing Officer disallowed deduction under section 54F claimed by assessee. CIT(A) affirmed the action of the AO. On appeal to the Tribunal, the assessee produced additional evidence. The Tribunal remanded the matter to the file of CIT(A) for fresh adjudication. AY. 2014-15)
Satish Agrawal v. ITO (2024) 207 ITD 294 (Raipur) (Trib.)

883 **S. 54F : Capital gains-Investment in a residential house-Registered sale deed-Failure to get documents registered for purchase of residential house-Denial of exemption is justified. [S. 45]**
Assessee sold a long-term capital asset, being land, and made investment in purchase of two adjoining residential flats vide an agreement to sale and paid certain amount as full and final payment. Assessee claimed exemption under section 54F. The Assessing Officer observed that documents related to agreement for sale were signed by assessee himself as a Director of company on 9-04-2015 which was not registered with Stamp Duty Authority. As per provision of section 54F, exemption is allowable if assessee purchases a residential house within a period of two years after date on which transfer took place. The Assessing Officer held that even after a lapse of three and half years from date of sale of property, the assessee had not registered documents for purchase of residential house being flat. Thus, the Assessing Officer disallowed claim of exemption under section 54F. CIT(A) dismissed the appeal. On further appeal the Tribunal held that, exemption under section 54F will be granted only if all conditions given under said provisions are followed/fulfilled by assessee who claims exemptions. Since assessee failed to get documents registered for purchase of residential house being flat, condition laid down in section 54F had not been fulfilled and thus, exemption under section 54F would not be allowed. (AY. 2015-16)
Hiteshbhai Mansukhbhai0020Bagdai v. ACIT (2024) 207 ITD 616 /230 TTJ 540 / 239 DTR 185 (Rajkot) (Trib.)

S. 54F : Capital gains-Investment in a residential house-Majority of investment was made subsequent to due date of filing of return-Exemption is allowed. [S. 45, 139(1), 139(4)] 884

The assessee earned capital gains on the sale of two plots and claimed exemption under section 54F by investing the sale consideration in a residential - The Assessing Officer denied the claim of the Assessee observing that certain amount which was not invested before due date of filing of return under section 139(1) by assessee, was not invested in CGAS in the prescribed time. The CIT(A) allowed the exemption noting that the entire investment was made within the extended time limit under section 139(4). On appeal, the Tribunal held that, the assessee had fulfilled basic condition for claiming exemption under section 54F of investing net consideration received on sale of original asset, in a new asset/residential house within prescribed period of two years of sale of original asset. Since basic condition for claiming exemption was fulfilled, exemption could not be denied merely for reason that majority of investment was made subsequent to due date of filing of return of income under section 139(1), and for not depositing unutilized amount in Capital Gains Accounts Scheme. (AY. 2016-17)

ITO v. Jhaveri Sandeep Bipinchandra (HUF) (2024) 207 ITD 622 (Ahd) (Trib.)

S. 54F : Capital gains-Investment in a residential house-Triplex Flat-Triplex flat purchased which had common living area, common kitchen and several rooms satisfied definition of a single residential unit and would qualify for exemption. [S. 45] 885

Assessee had sold certain shares and out of sale proceeds he purchased one triplex flat which consisted of a common living area, common kitchen and interconnected rooms and claimed deduction under section 54F. The AO held that, purchase of multiple flats under one agreement would be ineligible for exemption under section 54F. The CIT(A) affirmed the order of the AO. On further appeal, the Tribunal held that, the three flats were interconnected with a common living room, kitchen, and three rooms; and builder modified flats to meet assessee's needs; and triplex nature of unit was approved and accepted by builder. Based on these facts, the tribunal held that, triplex flats purchased by assessee with interconnectivity would be considered as single residential unit and would qualify for exemption. (AY. 2020-21)

Bhaskar Prataprai Shah v. DCIT (2024) 206 ITD 625/231 TTJ 719 /241 DTR 322 (Mum) (Trib.)

S. 54F : Capital gains-Investment in a residential house-Cost of improvement-Indexed cost of acquisition-Cost of installation of lift and sundry expenses-Expenses to make house habitable-Allowable as deduction-Purchase of house in name of parents-Absence from India-Payment from assessee's account-House gifted to assessee by parents-Exemption is allowable. [S. 45, 48] 886

The assessee sold a residential house and in the computation of long-term capital gains from the sale claimed indexed cost of acquisition. The Assessing Officer held that the claim was based on valuation report of a registered valuer and disallowed part of indexed cost of improvement, on the ground of insufficient evidence from vague photographs regarding the year of incurrence of expenditure. On appeal, the Tribunal held that, the Assessing Officer acknowledged that certain elements like air conditioning, modular kitchen, and

submersible pump, etc., were not considered part of the building. However, the Assessing Officer disputed the allowance of expenses related to these improvements. Despite agreeing that the valuation report adhered to CPWD guidelines, the Assessing Officer objected to vague photographs presented by the assessee as evidence. The assessee argued that these improvements enhance the property value, and the authorities inconsistently disallowed expenses. The Assessing Officer failed to prove the inaccuracies in the valuer's statement, and selective reading of the sale agreement is not sufficient for disallowance. That the Assessing Officer could not decide the need for a lift. Considering the 90 year old father was living with the assessee, the amount incurred for installation of lift was an allowable item of cost of improvement. The amount paid with regard to installation of the lift and the other sundry expenses to make the house habitable and hence the amounts are also allowed. That the investments had been made by the assessee from his bank account for payment to the seller of the property and the parents had gone to registration owing to the absence of the assessee in India. Further, the registered property had also been gifted to the assessee by the parents Hence, there was no ground to interfere with the order of the Commissioner (Appeals) in view of the rule of purposive construction and object of section 54F of the Income-tax Act, 1961 and the deduction under section 54F was to be allowed on the house registered in the name of the parents of the assessee. (AY. 2016-17)
Rajiv Ghai v. Asst. CIT (IT) (2024) 109 ITR 439 (Delhi)(Trib)

887 **S. 54F : Capital gains-Profit on sale of property used for residence-Registered in the name of the parents-Payment made through assessee's bank account-Registered property gifted to the assessee by parents-Rule of purposive construction-Deduction is allowed. [S. 45, 54]**
Where the assessee sells his residential property and reinvests the sale proceeds in purchasing another property which is registered under their parents' name, but such investment is actually made by the assessee from his own bank account and subsequently, the property is gifted to the taxpayer by their parents, the assessee was held to be eligible for a deduction under section 54 of the Income Tax Act by invoking rule of purposive construction. (AY. 2016-17)
Rajiv Ghai v. Asst. CIT [2024] 109 ITR 439 (Delhi)(Trib)

888 **S. 54F : Capital gains-Investment in a residential house-Three flats-Single unit to be eligible for deduction. [S. 45]**
The Assessee has entered into a single agreement to buy triplex flat from the buyer which has floor area of three flats. The agreement and the flat diagram clearly showed that all the three flats were interconnected with one living room, one kitchen and three rooms. The Tribunal held that, purchased triplex flats which are interconnected and which can be considered as "a residential unit" as per the definition of section 54F of the Act. (AY. 2020-21)
Bhaskar Prataprai Shah v. DCIT [2024] 161 taxmann.com 412 (Mum)(Trib)

S. 54G : Capital gains-Shifting of industrial undertaking from urban area –Firm-Partner-Partner in partnership firm-New investment in partnership firm-Eligible for exemption. [S. 45, Wealth-tax Act, 1957, S. 5(1)(iv)] 889

Assessee shifted his business undertaking from urban area to rural area and made further investment of certain amount in new business. He claimed exemption under section 54G. The Assessing Officer disallowed the claim on ground that new investment was made by partnership firm and not by assessee. The CIT(A) also upheld the order of the AO. On appeal, the Tribunal held that interest of a partner in a partnership firm belonged to him and would be includible in his 'assets' and will have to be taken into account while computing his net wealth. Since, assessee was a partner in said partnership firm and had total right in investment of firm, he was eligible for exemption under section 54G of the Act. Followed, *Juggilal Kamalpat Bankers v. WTO (1984) 16 taxmann.com 1/145 ITR 485 (SC), CWT v. Vipin kunar (1993) 69 Taxman 536/ 203 ITR 941 (P& H), Pr. CIT v. Vaidya Panalal Manilal (HUF) (2018) 259 Taxman 19 (Guj)(HC)* (AY. 2016-17)

Hasmukhbhai Makanbhai Padariya v. ITO (2024) 208 ITD 322 / (2025) 223 TTJ 959 (Rajkot) (Trib.)

S. 55 : Capital gains-Cost of improvement-Cost of acquisition-Fair market value-Indexed cost-Lease hold land-Rule ID. [S. 2(22B), 45, 55(2)(b))(ii), 260A, Wealth-Tax Rules, 1957, R. 1D] 890

Assessee transferred 7,150 shares of a private limited company and claimed indexed cost. The Assessing Officer held that while calculating cost of acquisition, value of land was to be excluded as land was not a part of sale consideration of shares. The CIT(A) deleted the addition. On appeal, the Tribunal held that the lease-hold interest in land of the company is capable of valuation and to be included in the valuation. On appeal, the Court observed that,on date of sale of shares, lease period of beyond 20 years was still left with company, value of leasehold land could not be excluded for calculating fair market value of shares of company. Further, fair market value, and not book value, of an asset was relevant for determining cost of acquisition as envisaged under section 55(2)(b)(ii) for determining capital gain under section 45. Therefore, for purpose of computation of capital gain, fair market value was to be determined and not value of shares, valuation of shares was to be made under rule 1D of Wealth Tax Rules. (AY. 1998-99)

PCIT v. Dr. Karan Singh (2024) 298 Taxman 610 /337 CTR 609 (J&K and Ladakh)(HC)

S. 55 : Capital gains-Cost of improvement-Cost of acquisition-Sale of property-Non-Resident-Fair market value as on 1-4-2001-Valuation on the basis of approved Government Valuer-Assessing Officer is directed to adopt fair market value of property on the basis of as determined by Registered valuer. [S. 48, 144C(7)(a), 144C(7)(b)] 891

Held that fair market value as on 1-4-2001 is to be determined on the basis of valuation on the basis of approved Government Valuer. The Assessing Officer was directed to adopt fair market value of property on the basis of as determined by Registered valuer. (AY. 2021-22)

Lalita Trehan v. Dy. CIT(IT) (2024) 116 ITR 1(SN)(Delhi)(Trib)

892 **S. 55 : Capital gains-Cost of improvement-Cost of acquisition-Indexed cost-Interest on loan-No direct cost of acquisition of property purchased-Cannot be included in cost of acquisition of property. [S. 45, 48]**

The Assessee sold the property and included amount of interest paid on housing loan in cost of acquisition of property as indexed cost of improvement while computing the capital gains. The AO reduced amount of interest from cost of acquisition of property and determined the long-term capital gains without including indexed cost of payment of interest. The CIT(A) affirmed the order of the AO. On appeal, the Tribunal held that, as per section 55(2) cost of acquisition would include only amount which had direct nexus with purchases of property and loan taken had no direct nexus with property purchases. Accordingly, the order of the AO was affirmed. (AY. 2013-14)

Rajesh Saluja v. Dy. CIT(2024) 206 ITD 78(Delhi)(Trib)

893 **S. 55A : Capital gains-Reference to Valuation Officer-Computation-Cost of acquisition-Value as on 1-4-1981-Reference To Valuation Officer-Amendment With Effect From 1-7-2012-Substitution of words is at variance with its fair market value for is less than its fair market value-Reference can be made to Departmental valuation Officer only where value shown by assessee is less than fair market value-Declaring value as on 1-4-1981 at figure higher than value determined by Departmental Valuation Officer-Value adopted by Departmental Valuation Officer could not be taken for computing fair market value. [S. 45, 55A(a)]**

The assessee had declared the fair market value as on April 1, 1981 at Rs. 21,58,689 which was higher than the estimate made by the Departmental Valuation Officer (Rs. 27,000) and the Assessing Officer (Rs. 70,664). The amendment in section 55A(a) of the Income-tax Act, 1961 by the Finance Act, 2012 with effect from July 1, 2012 substituted the words "is at variance with its fair market value" in place of "is less than its fair market value". However, reference can be made to the Departmental Valuation Officer only where the value of capital assets shown by the assessee is less than its fair market value but if the value of capital asset shown is more than the fair market value, reference cannot be made. The assessee having declared the value as on April 1, 1981 at Rs. 21,58,689 and the value determined by the Departmental Valuation Officer being less than that at Rs. 27,000, the value adopted by the Departmental Valuation Officer could not be taken for computing fair market value. Hence, the Tribunal accordingly allowed the appeal. the orders of lower authorities were not sustained. (AY. 2010-11)

Nirmala Venkatapathy (Smt.) v. ITO (2024)110 ITR 27 (SN) (Chennai)(Trib)

894 **S. 56 :Income from other sources –Share premium-Not received any consideration for allotment of shares in previous year relevant to current assessment year-Deletion of addition by the Tribunal is affirmed-Assessing Officer has no jurisdiction to substitute NAV method of assessing valuation of shares, once assessee has exercised option of a DCF valuation method as per rule 11UA(2)-Order of Tribunal is affirmed. [S. 56(2)(viib), 260A, R. 11UA(2)]**

The Assessee-company is engaged in business of generation and distribution of hydro electricity. It had issued 2. 25 crore equity shares with face value of Rs. 10 each for a premium of Rs. 90 per share. The Assessing Officer made addition under head

"income from other sources" under section 56(viib), on account of excess amount per share paid as premium. On appeal, Tribunal deleted the addition on the ground that since assessee did not receive any consideration for allotment of shares in previous year relevant to current assessment year; hence section 56(2)(viib) would not apply. The Court also upheld the order of the Tribunal which held that the Assessing Officer had no jurisdiction to substitute the NAV method of the valuation of shares, once the assessee had exercised option of a DCF valuation method as per rule 11UA(2) of the Income-tax Rules. (AY. 2018-19)

PCIT v. I. A. Hydro Energy (P.) Ltd. (2024) 299 Taxman 304/339 CTR 375 (HP)(HC)

S. 56 : Income from other sources-DCF method-Valuation report by a merchant banker-Assessing Officer is not empowered to value the shares on net valuation method-Directed to exercise of valuation afresh in accordance with DCF method. [S. 56(2)(viib), 56(2)(viic), 260A, R. 11UA(2)] 895

Assessee-company issued equity shares at premium. For purpose of valuation of shares, assessee placed reliance on valuation report drawn by a merchant banker wherein Discounted Cash Flow (DCF) method was adopted and value of each share was pegged at Rs. 9.60. However, Assessing Officer rejected said valuation report on ground that valuation of shares was not realistic keeping in view growth and stature of company. Assessing Officer independently determined value of each share by adopting NAV method. Consequently, the AO made addition to income of assessee under section 56(2)(viib). The CIT(A) and Tribunal up held the order of the Assessing Officer. On appeal, the High Court held that language of rule 11UA(2) places a choice upon assessee to either follow route as prescribed in clause (a) or in alternative to place for consideration of Assessing Officer a valuation report drawn by a merchant banker as per DCF method. Therefore, it would be open for Assessing Officer, for reasons so recorded, to doubt or reject a valuation that may be submitted for its consideration, statute clearly did not appear to empower the AO to independently evaluate face value of unquoted equity shares by adopting a valuation method other than one chosen by assessee. The matter was therefore remanded to Assessing Officer to undertake an exercise of valuation afresh in accordance with DCF method. (AY. 2014-15)

Agra Portfolio (P.) Ltd. v. PCIT (2024) 298 Taxman 685 / 464 ITR 348 (Delhi)(HC)

Editorial :Agra Portfolio (P.) Ltd. v. PCIT Agra Portfolio (P.) Ltd. v. PCIT(2018) 171 ITD 74 (Delhi)(Trib)

S. 56 : Income from other sources-Interest free deposit-Development agreement-Proposal to tax as revenue receipt-On writ court directed the Revenue to drop the proceeding. [S. 143(3), Art. 226] 896

The Assessee entered into a development agreement with a developer for construction of commercial complex. As per said agreement, developer paid an interest-free refundable security deposit of Rs. 50 lakhs to the assessee. The Assessing Officer took a view that since said amount was not shown by assessee in its accounts as a liability, it was to be treated as assessee's income under head "income from other sources". On writ before the High Court, it was observed that genuinety of said development agreement was not challenged by revenue, Therefore it was not appropriate on part of revenue to treat

aforesaid amount as revenue receipt for relevant year to impose tax. Accordingly, the court directed the revenue to drop proceedings against assessee to collect tax in respect of said amount. (AY. 2019-20)
Coastal Ceramics and Clay Works (P.) Ltd. v. UOI (2024) 297 Taxman 165 /336 CTR 486 (AP)(HC)

897 **S. 56 : Income from other sources-Right shares-Allotted to proportionate to shareholding in company-Provision is not applicable in respect of allocation of rights shares allotted below FMV proportionate to his shareholding in company-Gifts-Additional shares received on account of renunciation of rights issue by wife and father-Relatives-Excluded from purview of operation of section 56(2)(vii)(c)-Share premium-Balance sheet-Balance sheet is not drawn up on date of allotment, for arriving at FMV of shares under section 56(2)(vii)(c)(ii), previous balance sheet which is audited and approved in AGM has to be taken into consideration, before allotment of share. [S. 56(2)(vii)(c), R. 11UA(1)(c)]**
The Andhra Pradesh High Court dismissed the appeal, holding that:
Rights shares come into existence only when allotted by the company and cannot be regarded as 'received from any person' for the purpose of section 56(2)(vii)(c). The provision applies only where pre-existing property is transferred. The shares allotted to the assessee were not "received from any person," a fundamental requirement for invoking section 56(2)(vii)(c). The property must pre-exist for the application of this provision, consistent with the legislative intent.
Shares allotted to the wife and father of the assessee are covered under the definition of 'relative' and thus excluded from the operation of section 56(2)(vii)(c).
Regarding shares allotted due to renunciation of rights by a third-party shareholder (non-relative), the Tribunal's decision against the assessee was upheld. Such renunciation leading to disproportionate allotment is subject to valuation under section 56(2)(vii)(c). The fair market value (FMV) of shares was computed at Rs. 205. 55 based on the previous year's audited balance sheet approved at the Annual General Meeting (AGM). The balance sheet is considered the relevant document for FMV determination under section 56(2)(vii)(c)(ii), since the balance sheet on the date of allotment is not drawn up. These findings of fact regarding valuation were concurrent and did not warrant interference.
PCIT v. JigarJashwantlal Shah (2023) 154 taxmann.com 5/ 335 CTR 414 (2024)460 ITR 628/296 Taxman 269 (Guj)(HC)
Editorial : Jigar Jashwantlal Shah v. ACIT (2022)142 taxmann.com 200 / 226 TTJ 161 (Ahd)(Trib)

898 **S. 56: Income from other sources-Consideration received for shares in excess of fair market value-Allotment of new shares as right is creation of property cannot be considered as transfer-Section 56(2)(vii)(c) not applicable on new allotment of shares-Issue of additional shares for renunciation of rights issue-Wife/Father fall within definition of 'relatives' excluded-Order of Tribunal is affirmed. [S. 56(2)(vii)(c), 260A]**
The case of assessee was re-opened and notice was issued under section 148 on the allegation that the aggregate FMV of shares allotted to the assessee far exceeded consideration amount paid for receipt of shares. The Assessing Officer held that the

differential amount had escaped assessment and should be taxed under provisions of section 56(2). Further, the assessing officer taxed differential amount on shares alloted on account of renouncement of rights by wife & father of the assessee.

On appeal, the Commissioner (Appeals) and the Tribunal provided partial relief. Aggrieved by the order, the department filed appeal before the High Court.

On the first issue the Hon'ble High Court held that the provisions of section 56(2) would not be applicable to the issue of new shares considering that

(i) Explanatory note to the Finance Bill, 2010, clarifies that section 56(2)(vii)(c) ought to be applied only in the case of transfer of shares.
(ii) Allotment of new shares cannot be regarded as transfer of shares
(iii) There must be an existence of property before receiving to apply the provisions of section 56(2)(vii)(c)
(iv) Issue of new shares by company as a right shares is creation of property and merely receiving such shares cannot be considered as a transfer.

On the second issue the Hon'ble High Court held that issue of shares in the name of wife and father of the assessee would not be hit by section 56(2)(vii)(c) as both would be covered by definition of "relative" and the exempt from ambit of the said provision. (AY. 2013-14)

PCIT v. Jigar Jashwantlal Shah (2023) 154 taxmann.com 568 /335 CTR 414 (2024) 460 ITR 628 (Guj) (HC)

Editorial : Jigar Jashwantlal Shah v. ACIT (2022) 142 taxmann.com 200 (Ahd)(Trib) affirmed.

S. 56 : Income from other sources-Stamp valuation-Date of agreement-Part consideration was paid by Co-owner on or before the date of the agreement-Stamp duty as on the date of broking of the flat to be considered-The date of registration and who has made the payment is immaterial-Addition is deleted. [S. 56(2)(viib)] 899

In this case, part of the consideration was paid by a co-owner on or before the date of the agreement. The Gujrat High Court held that, the proviso to section 56(2)(vii)(b) providing stamp duty values on the date of agreement applies even in case where part of the consideration was paid by the Co-owner, and not by the assessee or on before the date of the agreement. Accordingly, the addition made by invoking section 56(2)(vii)(b) was rightly deleted by the Tribunal. (AY. 2015-16)(ITA No. 2406 /Mum/ 2023 dt. 30-10-2023)

Rekha Singh v. ITO (2024)BCAJ-February-P 41 (Mum)(Trib)

S. 56 : Income from other sources-Allotment letter issued by developer constitute an agreement for the purpose of proviso to section 56(2)(vii)(b)-Addition is deleted. [S. 56(2)(vii)(b)] 900

Held that allotment letter issued by developer constitute a valid agreement for the purpose of proviso to section 56(2)(vii)(b) of the Act. The AO has committed an error by ignoring the allotment letter. The assessee has made payment from June 2010 through account payee cheque which has to be construed as an agreement. Accordingly, the addition was deleted. (AY. 2015-16)(ITA No. 1200/ Kol/ 2024 dt. 3-10-2024)

Tamojit Das v. ITO (2024) BCAJ-November-P. 49 (Kol)(Trib)

901 **S. 56 : Income from other sources-Stamp value-Purchase of property jointly with eight persons-Less than stamp duty value-Addition cannot be made under section 69 of the Act-Provisions in Finance Act, 2013 has clarified that this amendment was not clarificatory in nature-It is categorically mentioned that this amendment was effective from 1st April, 2014 onwards and applicable to Assessment year 2014-15. [56(2)(vii)(b)]**
The assessee had jointly purchased a property along with eight other persons for a consideration less than the stamp duty value. The Assessing Officer made an addition under section 69 based on the difference between the purchase price and the stamp duty (Jantri) value. The Tribunal held that, prior to the amendment made by the Finance Act, 2013, w. e. f. 1st April, 2014, addition under s. 56(2)(vii)(b) could be made only if any immovable property, with stamp duty value exceeding Rs. 50,000, was acquired without consideration. The amendment that brought transactions for inadequate consideration within its scope was not clarificatory and was expressly stated to be applicable from A. Y. 2014–15 onwards; further, addition under s. 69 could be made only in respect of actual investment made by the assessee in the property and not in respect of (stamp duty value) Jantri value. Addition is deleted. (AY. 2012-13)
Pooja Dipen Joshi v. ITO (2024) 232 TTJ 34 (UO) (Ahd) (Trib)
Ashokkumar C. Joshi v. ITO (2024) 232 TTJ 34 (UO) (Ahd) (Trib)

902 **S. 56 : Income from other sources-Difference between purchase consideration and valuation made by DVO-An anti-avoidance provision-No infirmity in valuation report-There is no provision in the Act that before invoking the provisions of s. 56(2), the AO or the CIT(A) should prove with evidence that there is a transaction of on-money and then only addition can be made-Order of CIT(A) is affirmed. [S. 56(2)(x)(b)]**
The assessee had purchased the property at an agreed consideration of Rs. 16,80,00,000, which had been valued by the DVO at Rs. 19,38,86,000. The AO invoked the provision of S. 56(2) (x)(b)(B) to tax the difference as income from other sources. The order of the AO was affirmed by the CIT(A). On appeal, the Tribunal held section 56(2)(x) is an anti-avoidance provision and that there is no requirement under the Act that before invoking the provisions of s. 56(2), the AO or the CIT(A) should prove with evidence the existence of "on-money" for making the addition. Accordingly, the order of CIT(A) was affirmed. (AY. 2018-19)
West End Investment & Finance Consultancy Ltd. v. DCIT (2024) 229 TTJ 738 / 236 DTR 313 / 160 taxmann.com 679 (Mum) (Trib)

903 **S. 56 : Income from other sources-Transfer-Conversion of tenancy right to ownership rights-Not taxable-No immoveable property is received-No addition can be made either in the hands of the assessee or the land lord. [S. 2(47), 56(2)(x)(b)]**
Held that when a tenancy right is converted in to ownership right, no immovable property is received. Hence, it is not taxable u/s 56(2)(x)(b) of the Act. Accordingly, no addition can be made either in the hands of the assessee or the land lord. (AY.)(ITA No. 2933/Mum/ 2023 dt. 22-10-2024)
Shri Bipinchandra Shatntilal v. ITO (2024) Chamber's Journal-December-P 101 (Mum)(Trib)

S. 56 : Income from other sources-Shares at premium-DCF method-Assessing Officer cannot choose the method of his choice-Addition is deleted. [S. 56(2)(viib), R,11UA] 904

The addition made by the Assessing Officer under section 56(2)(viib) was affirmed by the CIT(A). On appeal, the Tribunal held that the assessee has followed the Discounted Cash Flow (DCF) method for determining the fair market value (FMV) of shares, as permitted under Rule 11UA. The Assessing Officer is not entitled to disregard the method chosen by the assessee and substitute it with a method of his own choice. In the present case, the assessee-company had allotted shares @ Rs. 100 (face value Rs. 10 plus premium Rs. 90) per share which was much less than the fair market value of Rs. 158 per share as determined by applying DCF method. Therefore, the addition was accordingly deleted. (AY. 2014-15, 2015-16)

Idana Pet Industries (P) Ltd. v. ITO (2023) 37 NYPTTJ 1672 / (2024) 227 TTJ 887 / 234 DTR 73 (Jodhpur)(Trib)

S. 56: Income from other sources-Interest income-Lending to members-Only the expenditure attributable to earning of interest income is allowable-Issue which was not examined in first round of litigation is cannot be raised in second round of litigation. [S. 57. 80P(2)(a)(i)] 905

Held that only the expenditure attributable to earning of interest income is allowable as a deduction under section 57. Further, the issue which was not examined in first round of litigation is cannot be raised in second round of litigation. (AY. 2006-07)

West Bengal State Co-Operative Agriculture And Rural Development Bank Ltd. v. ACIT (2024)116 ITR 610 (Kol)(Trib)

S. 56 : Income from other sources-Interest-Manual register with details of loan is seized in search-Addition cannot be made on basis of presumption-Rental income is offered to tax-Addition is deleted. [S. 69, 132(4A) [S. 69A, 69C, 131(IA), 132, 132(4A), 153C]] 906

Held that merely on the basis of manual register with details of loan which was seized during a search, an addition cannot be made under section 56 on basis of presumption. As regards rental income which is offered to tax, the addition made was deleted. (AY. 2012-13 to 2020-21)

Kiran Pal Singh v. Dy. CIT (2024) 115 ITR 33 (SN)(Delhi)(Trib)

S. 56 : Income from other sources-Premature surrender of pension policies-No deduction was claimed under section 80CC-Matter remanded to Assessing Officer to examine eligibility of proceeds from surrender of policy for exemption under section 10(10D). [S. 10(10D), 80CC(1), 80CC(2), 143(1), 147, 148] 907

Assessee had purchased pension policies which were prematurely surrendered during relevant assessment year. The Assessing Officer made addition of accretion on account of premature surrender of pension policies to assessee's income under section 56 of the Act. The CIT(A) affirmed the order of the AO. The Tribunal held that, section 80CCC(2) is applicable only when assessee is covered under sub-section (1) i. e. where a deduction had been claimed and allowed under sub-section (1). On facts there had been no claim of deduction under section 80CCC(1) by assessee, hence section 80CCC(2)

was not applicable. However, in respect of accretion, reference was required to be made to provisions of section 10(10D) to determine whether this amount was exempt under section 10(10D). Accordingly, the matter was restored to file of Assessing Officer to examine eligibility of proceeds from surrender of policy for exemption under section 10(10D). (AY. 2015-16)

Dipendu Bapalal Shah v. CIT(A) (2024) 209 ITD 315 (Mum) (Trib.)

908 **S. 56 : Income from other sources-Share premium-Valuation of shares of company on NAV method and its subsidiary on DCF method-Method adopted by Assessee to be accepted. [S. 56(2)(viib), R. 11UA]**

Assessee received share premium. AO made addition by stating that assessee valued own shares on NAV method whereas adopted Discounted cash flow method for valuing shares of its wholly owned subsidiary. Thus, the AO held excessive premium to be chargeable to tax u/s. 56(2)(viib). ITAT held that to value the business of the holding company, the valuation of the subsidiary company is relevant and important for determination of the valuation of the holding company. The whole basis of existence of the holding company depends upon the performance of the subsidiary company. Holding company does not have any activities of its own and all the education and training activities are carried in the subsidiary company. The Tax Authorities have to appreciate the purpose for which the valuation of shares was carried out and it should also appreciate the evolution of various valuation methods to suit the purpose. The assessee has brought in new investors and when the new investors are introduced the existing shareholders cannot be at par with the new shareholders by issuing shares at existing Net Asset Value valuation. The new shareholders have to bring in premium to match the goodwill carried on by the existing shareholders. Thus, valuation of shares of subsidiary as per DCF while determining valuation of assessee company as per NAV, was to be accepted and there was no reason to interfere with the method adopted by the assessee (AY. 2017-18)

Keep Learning Resources P. Ltd. v. ITO (2024) 112 ITR 731 /231 TTJ 340/243 DTR 46 (Mum)(Trib.)

909 **S. 56 : Income from other sources-Agricultural income-Increasing the expenditure on estimate basis-Addition is deleted. [S. 10(1)]**

Held that the Assessing Officer had merely acted on basis of surmises and conjuncture in adopting estimate of 30 percent of gross agriculture income as expenditure in connection of agriculture activities without carrying out further verification. Revenue had failed to bring any substantial material on record to prove that assessee had incurred expenses over & above what was stated by the assessee. Accordingly the addition made by Assessing Officer which was affirmed by the CIT(A) was deleted by the ITAT. (AY. 2017-18)

A. S. Srinath (HUF) v. ITO (2024) 208 ITD 39/114 ITR 15 (SN) (Bang) (Trib.)

S. 56 : Income from other sources-Purchase of flat-Immovable property-Date of allotment-Value as on date of allotment had to be treated as stamp duty value for purpose of provision of section 56(2)(x)-At that time payment made was more than stamp duty value, no addition could be made. [S. 56(2)(x)] 910

Assessee had booked flat with builder and got an allotment letter by making an initial payment of Rs. 10 lakhs on 10-9-2012 by an account payee cheque. Assessee made subsequent payments as per the schedule starting from 10-9-2012 till 21-9-2020. Said flat was registered in FY 2019-20. Assessing Officer proposed to add Rs. 1.88 crore [being difference between value of property as determined by Stamp Duty Valuation Authority (Rs. 3. 63 crore) and consideration paid by assessee for said property (Rs. 1. 75 crore)] pursuant to the provisions of section 56(2)(x). In response, assessee submitted that he had registered agreement in FY 2019-20 but the terms of transaction and price were fixed/agreed in FY. 2012-13 and not in FY. 2019-20. Assessing Officer rejected assessee's contention and made addition under section 56(2)(x). CIT(A) deleted the addition. On appeal the Tribunal held that when builder gave an allotment letter with terms and conditions and all rights; and value of purchase was agreed upon and assessee acted upon by accepting terms and conditions and started making agreed payment, then it was clearly covered under the proviso to section 56(2)(x). Since assessee had agreed to purchase in year 2012 in terms of allotment letter and also made payments through banking channels before sale was registered, value as on date of allotment had to be treated as stamp duty value for purpose of provision of section 56(2)(x) and since at that time payment made was more than stamp duty value, no addition could be made. Order of CIT(A) is affirmed. (AY. 2020-21)

ITO v. Narendra Kumar Jain. (2024) 208 ITD 583 (Mum) (Trib.)

S. 56 : Income from other sources-Valuation of shares-Valuation of shares of subsidiary company to determine FMV of holding company-DCF Method-Addition is deleted. [S. 56(2)(viib), R. 11UA(1)(c)(b)] 911

Assessee is a holding company of a fully owned foreign company (through SPV), wherein an immovable property in form of Hotel Apartment Building was situated abroad. It had issued equity shares at premium. For computing fair market value (FMV) of the shares issued by it, assessee had taken value of property held in name of overseas subsidiary company at a fair value using DCF method pursuant to rule 11UA(1)(c)(b) read with section 56(2)(viib). However, the Assessing Officer adopted book value of the investment in subsidiary company which resulted in lower valuation;Thus addition was made on account of excess premium treating it as deemed income. CIT(A) affirmed the order of the AO. On appeal, the Tribunal held that method adopted for reworking of share valuation of the subsidiary company by applying DCF method or any known method was permissible as long as assessee was able to establish correctness of valuation in light of valuation report furnished. Since assessee had produced valuation report as well as market valuation of subsidiary company in foreign currency, valuation of shares of subsidiary company to determine FMV of holding company, i. e., assessee-company for purposes of issuance of shares at premium was is in accord with deeming provision of section 56(2), therefore, the additions affirmed by the CIT(A) was deleted. (AY. 2016-17)

Leela Tourism and Heritage (P.)Ltd. v. ACIT (2024) 208 ITD 751 (Delhi) (Trib.)

912 **S. 56 : Income from other sources-Stamp duty-Actual sale consideration-Amendment to section 56(2)(vii)(b) made by Finance Act, 2013 with effect from 1-4-2014-Not clarificatory in nature and would be applicable only with effect from 1-4-2014 and not for assessment year 2012-13. [S. 50C, 56(2)(vii(b), 69, 147]**
Held that the amendment to section 56(2)(vii)(b) by Finance Act, 2013 [for taxing the difference between the value of an immovable property as per stamp valuation authority any the agreement value; when such difference exceeds Rs. 50,000/-]was not clarificatory in nature and was effective from 1-4-2014 and applicable from assessment year 2014-15 a only. Addition is deleted. (AY. 2012-13)
Pooja Dipen Joshi v. ITO (2024) 207 ITD 34/ 232 TTJ 34 (Ahd) (Trib.)

913 **S. 56 : Income from other sources-Interest-Enhanced compensation-Interest received under section 28 of Land Acquisition Act, 1894 on enhanced compensation granted by reference court on acquisition of land was not taxable under section 56(2)(viii) [S. 10(37) 56(2)(viii), Land Acquisition Act, 1894, S. 28]**
Held that interest received under section 28 of Land Acquisition Act, 1894 on enhanced compensation granted by reference court on acquisition of land was not taxable under section 56(2)(viii) of the Act. (AY. 2016-17)
Kusum Jayram Thakur Dhutum v. ITO (2024) 207 ITD 237 (Pune) (Trib.)

914 **S. 56 : Income from other sources-Purchase consideration for transferring immovable property-Late father in the year 1991 and 1992-Value as on date of agreement should only be compared with actual consideration for purpose of section 56(2)(vii)(b)-Unexplained investment-Difference between stamp value of subject property and actual purchase consideration is only deemed/notional income, same could not be brought with meaning of unexplained investment under section 69. [S. 56(2((vii(b), 69]**
Assessee had vide a registered purchase deed acquired title of a plot for a consideration of Rs. 1.05 lakhs on 2-3-2017. Assessing Officer contended that value of the property as per value adopted for stamp duty valuation was Rs. 1.11 crores and, accordingly, he made an addition of Rs. 1.10 crores being the difference between actual consideration and stamp duty value of said property. Commissioner (Appeals) deleted additions. On appeal the Tribunal held that initially an agreement to purchase awas executed between assessee's late father and D in year 1991 for consideration of Rs. 92,000 (including development charges). Assessee's father in lieu of aforesaid purchase transaction had deposited purchase consideration in instalments through cheques/drafts over period 27-6-1991 to 12-9-1992. After the demise of assessee's father said property was registered in the name of the nominee i. e. assessee and had paid balance development charges of Rs. 19,962. On the facts, the case of assessee would fall within the exception carved out on applicability of section 56(2)(vii)(b) and, therefore, stamp duty value as on date of agreement should only be compared with actual consideration. Order of CIT(A) was affirmed. Tribunal also held that since the difference between stamp value of property purchased by assessee and actual purchase consideration was only deemed/notional income, same could not be brought with the meaning of unexplained investment under section 69. (AY. 2007-08)
DCIT v. Ravi Shankar Gupta (2024) 207 ITD 406 (Raipur) (Trib.)

S. 56 : Income from other sources-Allotted 5 percent non-cumulative redeemable preference shares-Share premium-DCF Method-Report from Merchant banker-Valuation report deserved to be given status of statutory evidence with burden upon Assessing Officer to rebut same with evidences establishing either report was based on incorrect facts and figures, or otherwise, valuation method lacked sanctity to be considered as statutory evidence-Order of CIT(A) is affirmed. [S. 56(2) (viib), R. 11UA] 915

Assessee allotted 5 % non-cumulative redeemable preference shares to a company at rate of Rs. 20 per share, including share premium of Rs. 10 per share. Assessing Officer held that assessee had not furnished report from merchant banker with respect to computation and rational behind price of each share for purpose of rule 11UA and made addition. CIT(A) deleted the addition. On appeal the Tribunal held that by going through remand report, whereby Assessing Officer had tried to rebut valuation report, which had come on record in form of additional evidence, it came up that Assessing Officer had questioned dividend discount valuation model (DDVM) which had used discount factor of 7. 67 percent to arrive at valuation. The Assessing Officer submitted that the assessee had failed to substantiate the discount figure and supporting documents for DDVM. The Tribunal held that valuation of shares was a technical and complex issue for which Assessing Officer had limited authority to tinker valuation of methodology applied. Further, valuation report deserved to be given status of statutory evidence with burden upon Assessing Officer to rebut same with evidences establishing either report was based on incorrect facts and figures, or otherwise, valuation method lacked sanctity to be considered as statutory evidence. In instant case, valuation report as submitted was good enough to explain valuation and, therefore, impugned addition made to income of assessee was to be set aside. (AY. 2017-18)

DCIT v. Weldon Polymers (P.) Ltd. (2024) 207 ITD 517 (Delhi) (Trib.)

S. 56 : Income from other sources-Deeming provisions of section 56(2)(viib) is not applicable to subscriptions by holding companies-Order of CIT(A) is affirmed. [S. 56(2) (viib), R. 11UA (1)] 916

Assessee, engaged in energy and infrastructure development, issued 1,00,000 OCPS to its holding company. Assessing Officer recalculated Fair Market Value (FMV) of OCPS and deemed excess premium taxable under Section 56(2)(viib). On appeal, Commissioner (Appeals) accepted assessee's valuation and deleted addition. On appeal the Tribunal held that section 56(2)(viib) does not apply to subscriptions by holding companies. Convertible shares had been allotted to wholly owned 100% holding company, benefit if any arising to assessee-company on account of alleged excess premium, in turn, effectively benefits subscribers themselves having pre-existing rights in company. On a common sense approach, no purpose would be achieved by obtaining benefit by way of excess premium by the assessee from its own shareholder. Therefore, addition on account of premium amount in excess of FMV made by Assessing Officer under section 56(2)(viib) could not be sustained. Order of CIT(A) was affirmed. (AY. 2016-17)

ITO v. Solitaire BTN Solar (P.)Ltd. (2024) 207 ITD 574 (Delhi) (Trib.)

917 **S. 56 : Income from other sources-Agricultural lands-Within statutory tolerance margin of 10 per cent-Addition deleted. [S. 56(2)(vii)]**

Assessee purchased two agricultural land. Assessing Officer held that there was difference in value of said lands as per sale deeds and their valuation as per stamp valuation authority and he treated said differential amount as income of assessee under section 56(2)(vii). CIT(A) up held the order of the AO. On appeal the Tribunal held that differential amounts so arrived at was within statutory tolerance margin of 10 per cent as provided in section 56(2)(vii)(b) of the Act, addition was thus deleted. (AY. 2014-15)

Mahesh Ramkrishna Bhingare v. JCIT (2024) 207 ITD 694 (Nagpur) (Trib.)

918 **S. 56 : Income from other sources-Share premium-Real estate-Assessing Officer had not rejected valuation report duly prepared under rule 11UA-Addition deleted. [S. 56(2)(viib), R. 11UA]**

Assessee-company was engaged in the business of real estate. During the year, assessee allotted equity shares to certain companies at issue price of Rs. 75 per share comprising face value of Rs. 10 per share and premium of Rs. 65 per share. In relation to allotment of share, assessee submitted that it had obtained valuation report from a valuer which was submitted before Assessing Officer during course of assessment proceedings. Assessing Officer rejected said valuation report and calculated fair market value of equity shares as per net asset value method and made addition of balance amount. CIT(A) upheld the order of the AO. On appeal the Tribunal held that change of method of valuation could not be done by Assessing Officer. No addition could be made under section 56(2)(viib) in case of genuine commercial transaction in absence of any amount of unaccounted money of assessee. Both revenue authorities had not rejected the valuation report duly prepared under rule 11UA. Therefore, addition made by the Assessing Officer was deleted. (AY. 2016-17)

PRL Developers (P.) Ltd. v. ACIT (2024) 207 ITD 753 (Mum) (Trib.)

919 **S. 56 : Income from other sources-Share premium-Valued as per Rule 11UA(2)(b)-Discount Cash Flow Method (DCF)-The rejection of share valuation report held to be unjustified. [S. 56(2)(viib), R. 11UA]**

Assessee-company raised funds by issuing certain share at premium Lower authorities enhanced income of assessee under head income from other sources by applying section 56(2)(viib) on protective basis by rejecting valuation report furnished under rule 11UA(2)(b) i. e. Discounted Cash Flow Method (DCF Method). On appeal the Tribunal held that the assessee had provided valuation report of Chartered Accountant as per rule 11UA(2)(b) of IT Rules and arrived value of each share calculating same as per Discount Cash Flow Method. When law provides assessee to get valuation done from a prescribed expert as per prescribed method, then the same cannot be rejected because neither Assessing Officer nor assessee have been recognized as an expert under law. Therefore, Commissioner (Appeals) committed an error in rejecting valuation done by assessee from prescribed expert as per prescribed method, which ultimately resulted in enhancement of income and accordingly the same was deleted. (AY. 2016-17)

Shanta Blankets (P.) Ltd. v. ITO (2024) 206 ITD 715 (Delhi) (Trib.)

S. 56 : Income from other sources-Bonus shares-Out of capitalization of existing reserves in company-Overall wealth of a shareholder post-bonus or pre-bonus remains same-therefore, Provisions of section 56(2)(vii)(c) were not attracted in respect of bonus shares. [S. 56(2)(vii(c)] 920

During the year, the assessee shareholder had received bonus shares. Assessing Officer held that bonus shares were received by assessee without any consideration and invoked provisions of section 56(2)(vii)(c) and made addition to income of assessee for bonus shares received. CIT(A) deleted the addition. On appeal the Tribunal held that on an identical set of facts in case of wife of assessee, *(Dy. CIT v. Aruna Chandhok (ITA No. 387 / Delhi) of 2021 dt. 5-9-2023)* the Tribunal held that bonus shares were issued only out of capitalization of existing reserves in company and since overall wealth of a shareholder post-bonus or pre-bonus remained same, provision of section 56(2)(vii)(c) were not attracted for taxing bonus shares as income from other sources. Order of CIT(A) was affirmed. (AY. 2015-16)

DCIT v. Kul Prakash Chandhok (2024) 205 ITD 611 (Delhi) (Trib.)

S. 56 : Income from other sources-Fair market value-Unquoted equity shares-Valuation date-Value as on date on which assessee company receives property or consideration-Matter remanded. [S. 56(2)(viib), R. 11UA] 921

Held that in terms of section 56(2)(viib), read with rule 11UA, fair market value of unquoted equity shares would be its value as on date on which assessee company receives property or consideration. Matter was restored to Assessing Officer to determine same as per rule 11UA, read with rule 11U. (AY. 2013-14)

Chandhok Cold Storage (P.) Ltd. v. ITO (2024) 204 ITD 17 / 227 TTJ 744 (SMC) (Raipur) (Trib.)

S. 56 : Income from other sources-Valuation of shares-DCF method-NAV Method-Once the assessee has exercised an option, Assessing Officer was bound to follow the same. [S. 56(2)(viib), R. 11UA] 922

Assessee issued equity shares at a premium and submitted valuation report as per Discounted Cash Flow (DCF) method. The Assessing Officer, however, adopting Book Value Method made an addition under section 56(2)(viib). CIT(A) deleted the addition. On appeal the Tribunal held that since valuation of assessee was supported by valuation report from a technical expert who had adopted DCF method, one of recognized methods under rule 11UA. Order of CIT(A) was affirmed. (AY. 2015-16)

DCIT v. Hometrail Buildtech (P.) Ltd. (2024) 204 ITD 154 (Delhi) (Trib.)

S. 56 : Income from other sources-Issue of shares at premium-DCF method-Share premium charged was lower than fair market value of shares determined by auditor-Section 56(2)(viib) could not be applied. [S. 56(2)(viib)] 923

Assessee-company issued certain equity shares to a company at a premium of Rs. 590 per share. The Assessee had opted for valuation as per DCF method. The Assessing Officer held that the assessee had not given any justification for charging such a huge premium. He further held that assessee was incurring losses during subsequent assessment year 2018-19. Accordingly, he treated the value of premium on shares at

Rs. Nil. He invoked provisions of section 56(2)(viib) and disallowed the entire share premium. CIT(A) deleted the addition. On an appeal before the Tribunal it was held that CA had arrived at fair market value (FMV) of shares at premium at Rs. 735 per share. Share premium charged by the assessee was lower than FMV determined by auditor. Further, the Assessing Officer treated the value of premium on shares at Rs. Nil without following any of methods prescribed under relevant Rules. It was also evident from record that Assessing Officer compared financials of assessee and "projected summarised financials" in valuation report which were not exact and could undergo change so as to hold that assessee had in fact incurred loss during assessment year 2018-19. On facts, section 56(2)(viib) was not applicable to case of assessee and, addition made under section 56(2)(viib) is deleted. (AY. 2016-17)

PNP Maritime Services (P.)Ltd. v. DCIT (2024)204 ITD 810 /231 TTJ 31 (Mum)(Trib)

924 **S. 56: Income from other sources-Sale of property-Stamp value-Agreement fixing consideration in 2010, registration taking place in 2013-Paid part consideration by cheque in 2010 before date of agreement-Stamp value on date of agreement in 2010 to be considered-Addition deleted. [S. 56(2)(vii)(b)]**

The Tribunal held that the proviso to section 56(2)(vii)(b) of the Act was mandatory and not directory and that the assessee was entitled to the benefit of the said proviso as he had fulfilled the conditions laid down therein. The Tribunal observed that the assessee had entered into an agreement to sell the property on 21.06.2010 and had paid Rs. 1,00,00,000 by cheque on 23.06.2010 as a part of the consideration. The Tribunal also noted that the assessee had submitted the valuation report of the property as on the date of the agreement, which reflected the market value of the property as Rs. 1,82,00,000, which was same as the consideration paid by the assessee. The Tribunal further noted that the bank had verified the payment of Rs. 1,00,00,000 by cheque and had furnished the relevant details to the AO. The Tribunal, therefore, held that the AO and the DRP had erred in adopting the stamp duty value of the property on the date of registration and disregarded the proviso to section 56(2)(vii)(b) of the Act. (AY. 2014-15)

Shyamkumar Madhavdas Chugh v. ACIT [2024] 109 ITR 49 (SN)/ 205 ITD 227 (Delhi)(Trib)

925 **S. 56 : Income from other sources-Interest income on funds-Separate bank accounts-Deposited into consolidated Fund of India- Addition can not be made with respect to interest earned in hands of assessee- Order of CIT(A) deleting the addition is affirmed. [S. 4]**

Assessee, National Highways Infrastructure Development Corporation (NHIDCL),is a fully owned company of Ministry of Road Transport & Highways (MoRTH), Government of India engaged in business of developing National Highways. Assessee earned interest income on funds received from Government of India (GoI) - Assessing Officer treated said interest as income from other sources under section 56 and made additions in hands of assessee. CIT(A) deleted the addition. On appeal the Tribunal held that since entire interest earned had already been deposited into consolidated fund of India by way of challans, no addition was called for in hands of assessee. Order of CIT(A) was affirmed. (AY. 2016-17 to 2018-19)

Dy. CIT v. National Highways & Infrastructure development Corp. India (2024) 204 ITD 1 (Delhi)(Trib)

S. 57 : Income from other sources-Deductions-Interest expenditure is more than interest income-Allowable as deduction. [S. 56, 57(iii)] 926

Held that even if interest expenditure was more than interest income; it was allowable as deduction. However, the only condition was that the expenditure must be wholly and exclusively for earning such income. (AY. 2013-14) (ITA No. 429/ Ahd/ 2018 dt. 15-3 2024)

Shri Girish Bhai Vadilal Shah v. DCIT (2024) Chamber's Journal –(2024) April-P. 107 (Ahd)(Trib)

S. 57 : Income from other sources-Deductions Secured debentures-Interest income during pre-commencement period-Entire investment was out of borrowed funds - It is only real income, unless constrained by law, that is liable to tax- Interest expenditure is allowable as deduction- Only net income can be taxed. [S. 5, 36(1)(iii), 56, 57(iii)] 927

Assessee is engaged in hospitality and agriculture, reported a loss due to pre-operative expenses before business commencement. It raised funds through secured debentures, part of which were invested in a perpetual debt instrument (PDI) generating interest income. Assessing Officer held that in case of assessee, payment of interest was on funds raised through secured debentures, and those funds were not intended specifically for investing in PDIs but rather for fulfilling company's overall objectives and therefore, this expenditure could not be considered as laid out wholly and exclusively for earning such income and hence could not be deducted under Section 57 and accordingly, taxed gross receipt under section 56 of the Act. CIT(A) up held the order of the Assessing Officer. On appeal the Tribunal held that only net interest income, after deducting interest expenditure (11% per annum), should be assessed under Section 56, as investment in PDI was financed by borrowed funds. (AY. 2014-15)

Muthoot Agri Projects & Hospitalities (P) Ltd. v. ACIT (2024) 229 TTJ 468 / 237 DTR 220 / 164 taxmann.com 59 (Cochin)(Trib)

S. 57 : Income from other sources-Deductions-Brokerage to broker-Refund of investment (Principal amount and interest)-Cancellation of project-No bifurcation or split of this expenditure relating to recovery of principal and recovery of interest-Proportionate disallowance under section 57(iii) of brokerage expenses relating to principal amount not justified. [S. 56, 57(iii)] 928

Assessee invested in a project which was cancelled due to non-receipt of necessary permissions from Government, the developer refused to return money due to which assessee had to take services of group of brokers. Assessee paid brokerage of certain amount for securing refund of entire money invested by him in project. Refund of money included principal and interest component. Assessee claimed deduction of brokerage under section 57(iii). Assessing Officer disallowed a portion of brokerage paid by assessee towards principal amount. CIT(A) sustained the disallowance. On appeal the Tribunal held that payment of brokerage was a lumpsum payment made by assessee in terms of memorandum of understanding where there was no bifurcation or split of this expenditure relating to recovery of principal and recovery of interest, both of which were due to be received from builder by assessee, nor it was linked on a percentage basis depending upon quantum of recovery out of total due. Expenditure incurred

by assessee was for sole purpose of recovering amount due to him from builder and assessee had no option except to incur expenditure in order to make possible recovery of amount including earning of income in form of interest on principal amount. Expense incurred is neither in nature of capital expenditure nor in nature of personal expenses of assessee. Accordingly the proportionate disallowance of brokerage expenses was not justified. (AY. 2015-16)
Deepak N. Sippy v. ACIT (2024) 209 ITD 103 (Mum) (Trib.)

929 **S. 57 : Income from other sources-Deductions-Interest income-Burden is on assessee-Burden is on assessee to provide sufficient details to show that expenses were incurred wholly and exclusively for purpose of making or earning interest income. [S. 56, 57(iii)]**
Assessee-individual declared loss of certain sum under head Income from other sources. Assessing Officer completed assessment by making disallowance of deductions claimed under section 57. CIT(A) up held the order off the AO. On appeal the Tribunal held that in terms of legal provision of section 57(iii), deductions claimed by assessee were allowable only if relevant expenses have been laid out or expended wholly and exclusively for purpose of making or earning interest income. Since deduction claimed by assessee under section 57(iii) was about 2. 68 times of interest income and, thus, there was a wide gap, it was assessee's burden to provide sufficient details to show that expenses were incurred wholly and exclusively for purpose of making or earning interest income. Since Assessing Officer disallowed interest deduction claimed by assessee fully as if assessee had not utilized a single pie of borrowed funds for giving loans, approach of Assessing Officer was also not correct. Matter was remanded back to file of Assessing Officer for a fresh adjudication. (AY. 2020-21)
Vinayak Kalani v. DCIT (2024) 209 ITD 501 (Indore) (Trib.)

930 **S. 57 : Income from other sources-Deductions-Interest-Cost of funds on interest income-Matter remanded. [S. 56, 80P(2)(a)(i)]**
Assessee claimed deduction of expenditure incurred in connection with interest received on investments made in co-operative banks. Tribunal remanded back to Assessing Officer for determining cost of funds for earning interest income. (AY. 2017 18, 2018-19)
Saptagiri Pattina Souharda Sahakari Sangha Niyamitha v. ITO (2024) 207 ITD 41 (Bang) (Trib.)

931 **S. 57 : Income from other sources-Deductions-Interest-Income earned was not equal to percentage of interest-Interest expenditure incurred is allowable as deduction. [S. 56, 57(iii)]**
Held that though income earned by assessee by way of interest was not equal to percentage of interest in terms of interest expenditure incurred, same could not be a reason to disqualify certain expenditure within provision of section 57(iii), therefore, expenditure incurred was held allowable in terms of provisions of section 57(iii) of the Act. (AY. 2017-18)
Sunil Bardia v. ITO (2024) 204 ITD 68 (Raipur) (Trib.)

S. 61 : Revocable transfer of assets-Trust-Association Of Persons-Stressed Assets Of Banks And Financial Institutions Acquired By ARCIL by setting up Trusts and formulating schemes-Trust is not an Association of persons-No discretion is given to trustee to decide allocation of income every year, nor right given to beneficiary to exercise option to receive income or not-Income liable to be assessed in hands of beneficiaries-Respective shares known since inception-Assessee could not be considered as an indeterminate trust. [S. 63, Indian Trusts Act, 1882, S. 7, 9, Securitisation And Reconstruction Of Financial Assets And Enforcement Of Security Interest Act, 2002] 932

Assessee deriving income from assets reconstruction activity and handling of non-performing assets of banks and financial institutions. Assessing Officer holding that assessee-trust was not a valid trust. CIT(A) affirmed the order of the AO. On appeal the Tribunal held that while deciding the case of a similar trust set up by the ARCIL, the Tribunal had held that there was no prohibition on the settlor becoming a beneficiary of the trust in terms of sections 7 and 9 of the Indian Trusts Act, 1882, that the Assessing Officer was wrong in holding that the assessee-trust was not a valid trust, for the reason that its contributors and beneficiaries were the same, that the assessee-trust was a revocable trust, and therefore, the provisions of sections 61 to 63 of the Act would be applicable to it, that there was nothing on record to suggest that the beneficiary had agreed to associate for any common objective and the beneficiaries who did not have any control over the activities carried on by the trustee in managing the trust, had made their respective investments based on the offer documents, and on the basis of their investments made in the trust were allotted the security receipt which represented their undivided and proportionate interest in the corpus of the trust, that the Assessing Officer had failed to place on record any material to suggest that there was a concerted effort by the beneficiaries to earn income jointly, and that therefore, the assessee could not be treated as an association of persons. The Tribunal held that the assessee-trust was a determinate trust and no discretion had been given to the trustee to decide the allocation of the income every year, nor was any right given to the beneficiary to exercise an option to receive the income or not each year. Therefore, similarly in the case of the assessee also, the trust was a revocable trust and was not an association of persons. The income is liable to be assessed in the hands of the beneficiaries in terms of the provisions of sections 61 to 63 of the Act. Further, since the respective shares were known since inception, the assessee could not be considered as an indeterminate trust. (AY. 2016-17)

Arcil Retail Loan Portfolio 004 B Trust v. ITO (2024)112 ITR 65 (SN)(Mum) (Trib)

S. 61 : Revocable transfer of assets-Trust-Settlor-Income arising from revocable transfer of assets is taxable in hands of transferor, i. e., settler of revocable trust and it is to be clubbed in total income of transferor and not in total income of transferee of assets-Addition deleted. [S. 62, 63, 148] 933

During year the year under consideration, assessee, a revocable private trust, purchased units of mutual funds. A notice under section 148 was issued upon assessee for reopening proceedings which was returned unserved. Thereafter, a show cause notice was issued by Assessing Officer which was also not served/responded by assessee. Accordingly, he made an addition on account of purchase of mutual

funds. Commissioner (Appeals) upheld additions. On appeal the Tribunal held that assessee was a revocable trust settled by Mr. Burjor Hormosijiand Mrs Aloo Burjor. It had purchased units of mutual funds and capital gain on mutual funds had already been offered to tax in income tax return of settler. Therefore income or any source of investment in mutual funds was taxable in hands of settler and not in hands of assessee trust. Addition was to be deleted. (AY. 2010-11)
Reporter Family Private Trust, Mumbai v. Assessing Officer (2024) 206 ITD 108/229 TTJ 53 (Mum) (Trib.)

934 **S. 64 : Clubbing of income-Spouse-Income returned and assessed in the hands of wife cannot be again be taxed in the hands of the husband by invoking section. 64(1)(ii) of the Act. [S. 64(1)(ii), 153A]**
Held that the income returned and assessed in the hands of wife cannot be again be taxed in the hands of the husband by invoking section. 64(1)(ii) of the Act. The Department is debarred from taking a contrary view and taxing it in the hands of assessee on the ground that his wife was not actually carrying out any business. (AY. 2013-14 to 2019-20)(ITA Nos. 25 to 30 / Rjt/ 2023 and ITA No. 96/ Rjt/ 2023 dt 7-2-2024)
Ketan Prabhulal Dalsanaiya v. DCIT (2024) BCAJ-May-P. 47 (Rajkot)(Trib)

935 **S. 68: Cash credits-Deposits in foreign bank account-Deposit belonged to the nephew and not assessee-Sufficient evidence provided-No additions in the hands of the assessee-210 days delay-Reasons for condonation of delay are neither satisfactory nor sufficient-SLP of revenue dismissed on account of delay and also on merits. [S. 69, Art. 136]**
Reassessment notices were issued on the grounds that the assessee deposited a huge amount of money in foreign bank accounts in Geneva but had not filed his return of income or explained the source of the deposits. The assessee explained that his nephew made the deposits. The Court noted that the provisions of sections 68 and 69 can only apply if there is an absence of explanation regarding the nature and source of income. The explanation offered by the assessee, in the opinion of the AO, was considered unsatisfactory. The Court held that the assessee had explained the nature and source of the investments. Also, the Tribunal noted that the assessee's name was withdrawn from the account even before the notice was served. Further, the assessee was an agriculturist with only small land holdings and, therefore, could not have been in a position to make such huge deposits, especially in foreign currencies. The Hon'ble Supreme Court dismissed the Special Leave Petition. (AY. 2006-07, 2007-08)
PCIT v. Joginder Singh Chatha (2024) 469 ITR 149 / 301 Taxman 551 (SC)
Editorial: PCIT v. Joginder Singh Chatha [2023] 156 taxmann.com 509/(2024) 469 ITR 142 (P & H) (HC)

936 **S. 68 : Cash credits-Share premium-Proved identity and creditworthiness of investor and genuineness of transactions-Order of Tribunal confirming the addition is set aside-Delay of 325 days-SLP of revenue dismissed. [S. 143(1), 147, 148, Art. 136]**
The assessee filed its return of income which was processed under section 143(1). Subsequently, the Assessing Officer issued a reopening notice on ground that the

assessee had issued shares to its director at Rs. 10 whereas shares were allotted to company WPIPL at a premium of Rs. 990. It further passed reassessment order under section 68 on account of said share premium amount. On appeal, the Commissioner (Appeals) as well as the Tribunal also upheld the addition made by the Assessing Officer. On appeal the Court held that the assessee had produced various documents including copies of bank statements of Walden Properties Investment Pvt Ltd. (WPIPL), copies of share certificates, copy of its annual return filed before Registrar, copy of assessment order under section 143 read with section 153C in case of WPIPL. Assessee had also annexed balance sheet of WPIPL which showed that it had taken term loan of huge amount. WPIPL also had reserves and surpluses of huge amount and its investments in various mutual funds, national savings scheme and equity shares including investment with assessee was also of huge amount. Transfer of funds was made through bank transactions. Accordingly, the High Court held that the addition under section 68 made on account of share premium received is set aside. There was delay of 325 days in filing SLP by Revenue. Delay is not satisfactorily explained, the SLP of revenue dismissed. (AY. 2008-09)

ITO v. Cornerstone Property Investments (P.) Ltd. (2024) 300 Taxman 85 (SC)

Editorial: Cornerstone Property Investments (P.) Ltd v. ITO (2023)) 152 taxmann.com 256 (Karn)(HC)

S. 68: Cash credits-Capital gains –Long term capital gains on sale of shares-Demat account for more than 12 months-Entry Operator-Sold through stock exchange after payment of security transactions tax-Denial of opportunity of cross examination-Entitle to exemption-Tribunal is justified in deleting the addition-SLP of revenue dismissed. [S. 10(38), 45, Art. 136] 937

Assessee claimed exemption under section 10(38) on long-term capital gain on sale of shares. Assessing Officer rejected claim and taxed same under section 68. Commissioner (Appeals) allowed claim on ground that it was satisfied that purchase of liquid shares had been made through Account Payee Cheques and shares themselves were held in Demat Account for more than 12 months and then sold through recognized stock exchange after payment of security transaction tax. Tribunal held that additions were made by Assessing Officer on basis of statement of entry operators recorded on various dates in some other proceedings not connected with assessee and no opportunity to cross-examine so-called entry providers was given to assessee. On appeal to High Court held that both grounds viz., claim for benefit of section 10(38) and denial of an opportunity to cross-examine entry providers, turned on facts. Order of Tribunal is affirmed. SLP of revenue dismissed. (AY. 2014-15)

PCIT v. Kishore Kumar Mohapatra (2024) 298 Taxman 648/ (2025) 475 ITR 198 (SC)

Editorial: PCIT v. Kishore Kumar Mohapatra (2024) 162 taxmann.com 4/ (2025) 475 ITR 195 (Orissa)(HC)

S. 68: Cash credits -Statement of Directors-High Court affirmed the order of the Tribunal deleting the addition-SLP of Revenue is dismissed. [S. 132, Art. 136] 938

Affirming the order of the Tribunal, High Court held that where Assessing Officer solely, based on statements of Directors recorded during a search operation conducted under section 132 on assessee, made addition under section 68 without probing deeper into

income-tax returns of creditor companies and without scrutinizing documents furnished by assessee to prove genuineness of such credits, addition was not justified. SLP of Revenue is dismissed.
PCIT (Central) v. Dwarka Prasad Aggarwal (2024) 299 Taxman 363 / 471 ITR 435 (SC)
Editorial: PCIT v. Dwarka Prasad Aggarwal (2022) 140 taxmann.com 32 / (2024) 471 ITR 432 (Delhi)(HC)

939 **S. 68: Cash credits-long term capital gains from equities-Penny stock-Accommodation entries-Survey-Report of Investigation Wing-Delay of 303 days-Explanation offered by the Revenue is held to be not sufficient to condone the delay-SLP of revenue dismissed. [S. 10(38), 45 Art. 136]**
Assessee filed return and claimed deduction under section 10(38) During survey conducted at business premises of assessee's group companies, it was noted from report of Investigation Wing that assessee was in list of beneficiaries who had allegedly taken accommodation entries from Kolkata based companies. Assessing Officer treated long term capital gain as bogus on ground that receipts constituted accommodation entries taken by assessee. CIT(A) deleted the addition. On appeal the Tribunal held that all details of purchase and sales were placed before Assessing Officer along with contract notes for purchase and sale, demat account and bank statement. Accordingly, the Tribunal allowed claim of assessee by holding that no incriminating materials were found during survey and statements relied upon were recorded much before date of survey conducted at premises of assessee. High Court affirmed the order of the Tribunal. SLP of Revenue is dismissed on the ground that the Revenue has not explained the delay of 303 days in filling the SLP.
PCIT v. Anupama Mohapatra (2024) 299 Taxman 177 (SC)
Editorial: PCIT v. Anupama Mohapatra (2024) 161 taxmann.com 702 (Orissa)(HC)/ PCIT v. Dipansu Mohapatra (2023) 293 Taxman 173 /[2024] 463 ITR 678 (Orissa)(HC)

940 **S. 68 : Cash credits-Capital gains –Long term capital gains on sale of shares-Demat account for more than 12 months-Entry operator-Sold through stock exchange after payment of security transactions tax-Denial of opportunity of cross examination -Entitle to exemption -Tribunal is justified in deleting the addition -SLP of revenue dismissed. [S. 10(38), 45, 69, 133A, Art. 136]**
Assessee filed its return for relevant year. Subsequently, pursuant to a survey assessee filed revised return and claimed exemption in respect of long-term capital gains on shares under section 10(38). Assessing Officer rejected assessee's plea and made additions under sections 68 and 69 by relying on statements from entry operators. On appeal, Commissioner (Appeals) accepted assessee's claim, noting that shares were purchased via Account Payee Cheques, held in a Demat Account for over 12 months, and sold through a recognized stock exchange after payment of security transaction tax. Tribunal upheld Commissioner (Appeal)'s decision, emphasizing assessee's right to correct mistakes and criticized Assessing Officer's reliance on statements from entry operators to support additions under sections 68 and 69 as those statements were recorded in unrelated proceedings before survey on assessee, and assessee was not afforded an opportunity to challenge or cross-examine providers of those statements. On

revenue's appeal, High Court confirmed order of Tribunal. SLP of Revenue is dismissed. (AY. 2014-15)
PCIT v. Kuntala Mohapatra (2024) 298 Taxman 545 /466 ITR 150 (SC)
Editorial: PCIT v. Kuntala Mohapatra (2024) 160 taxmann.com 567 / 466 ITR 47(Orissa)(HC)

S. 68 : Cash credits-Capital gains-Long term capital gains on sale of shares-Demat account for more than 12 months -Entry operator-Report from Investigation wing -Accommodation entries -Sold through stock exchange after payment of security transactions tax-Denial of opportunity of cross examination -Entitle to exemption-Tribunal is justified in deleting the addition-Delay of 449 days -Delay in filing SLP is not condoned-SLP of revenue dismissed. [S. 10(38), 45, 69, 133A, Art. 136] 941
During survey conducted at business premises of assessee's group companies, it was noted from report of Investigation Wing that assessee was in list of beneficiaries who had allegedly taken accommodation entries from Kolkata based companies. Assessee filed revised return wherein exemption claimed under section 10(38) was withdrawn and entire income was offered for tax as income from other sources. During scrutiny, assessee claimed that revised return was filed under duress during survey and claim made under section 10(38) in original return was valid. Assessing Officer denied said claim and treated same as bogus on ground that receipts constituted accommodation entries taken by assessee. Tribunal held that all details of purchase and sales were placed before Assessing Officer along with contract notes for purchase and sale, demat account and bank statement. Tribunal allowed claim of assessee by holding that no incriminating materials were found during survey and statements relied upon were recorded much before date of survey conducted at premises of assessee. High Court affirmed the order of the Tribunal. Delay on filing the SLP is dismissed. Order of High Court is affirmed. (AY. 2014-15, 2015-16)
PCIT v. Dipansu Mohapatra (2024) 298 Taxman 194 / 463 ITR 681 / 301 Taxman 70 (SC)
PCIT v. Himanshu Mohapatra (2024) 298 Taxman 194 / 463 ITR 681 / 301 Taxman 70 (SC)
Editorial: PCIT v. Dipansu Mohapatra (2023) 293 Taxman 173 /463 ITR 678 (Orissa) (HC)

S. 68: Cash credits-Loan from minor sons-Source explained as gift-Brothers have stated that they have not given gift-Addition is affirmed by High Court-SLP dismissed. [Art. 136] 942
High Court by impugned order held that where assessee claimed to have taken loans from his two minor sons and source of loan was stated to be gift received by assessee's sons from their uncle i. e., brother of assessee, since assessee's brother categorically stated that he had not given any gifts to anybody, impugned addition made by Assessing Officer in respect of loan amount was to be confirmed SLP filed by assessee against said impugned order is dismissed. (AY. 2001-02)
Virendra Behari Aggarwal (Dead) v. CIT (2024) 297 Taxman 378 / 464 ITR 391 (SC)
Editorial: CIT v. Virendra Behari Aggarwal (2015) 229 Taxman 193 (All)(HC)

943 **S. 68: Cash credits-Opportunity to cross examination was not given-Produced affidavit of lenders and notice issued was complied with-High Court affirmed the order of the Tribunal deleting the addition-SLP of Revenue is dismissed. [S. 131, 133(6), Art. 136]**
SLP dismissed in a case where the assessee was not given an opportunity to cross-examine the persons whose statements were recorded during the investigation based on which additions were made in the hands of the assessee under S. 68 of the Act. Revenue had recorded statement of director of a lender who confirmed transaction of loan and even assessee produced affidavits and notices issued by revenue under sections 131 and 133(6) which were duly complied with by its creditors. It was further noted that there was no link found in documents and financial statements of companies concerned. Tribunal held that since assessee was not granted an opportunity to cross-examine person whose statements were recorded during investigation, additions made by Assessing Officer on basis of such investigation which was not privy to assessee were to be deleted. High Court upheld order passed by Tribunal.
PCIT v. Hadoti Punj Vikas Ltd (2024) 296 Taxman 248 (SC)
Editorial: Pr. CIT v. Oriental Power Cables Ltd. [2022] 143 taxmann.com 370 (Raj.) (HC)

944 **S. 68: Cash credits-Explained the source of deposit-Agriculturist-Deletion of addition is affirmed. [S. 69, 260A]**
Dismissing the appeal of the Revenue the Court held that the assessee had explained the nature and source of the investments, that the Tribunal had rightly come to the conclusion that the name of the assessee was withdrawn even prior to the notice being served upon him, that a justifiable explanation was given that the nephew had got his signatures, that the assessee being an agriculturist and only having a small holding of land apparently could not be in possession of huge amounts, which were also in foreign currency. Nothing as such was produced on record that it was transferred from India where he was doing some business. It was not the case of the Revenue that the amounts were credited from his income while doing business abroad. The assessee was not based in abroad for such long periods to generate that kind of income. The deletion of additions is affirmed. (AY. 2006-07, 2007-08)
PCIT v. Joginder Singh Chatha [2023] 156 taxmann.com 509/ (2024)469 ITR 142 (P&H) (HC)
Editorial: PCIT v. Joginder Singh Chatha [2023] 156 taxmann.com 509 (2024) 469 ITR 149 (SC), SLP of Revenue is dismissed, delay of 210 days, the reasons assigned for seeking condonation of delay are neither satisfactory nor sufficient in law to be condoned.

945 **S. 68: Cash credits-Share capital-Identity of investors and source of income established-Deletion of addition is affirmed. [S. 260A]**
Held, dismissing the appeal of the Revenue the Court held that the identity of the investors had been established. They had appeared before the authority and submitted the records showing the source of income. Order of Tribunal is affirmed. (AY. 2012-13)
PCIT v. Khyathi Steel Industries Pvt. Ltd. (2024)469 ITR 579 (Karn)(HC)

S. 68: Cash credits-Not explained the source-Addition is justified. [S. 260A] 946
Held that an educational institution, could not produce sufficient material to dispel the suspicion which had been raised about the donations received from companies which were not even based geographically close to the assessee and the reason to grant the donation was never properly explained. The addition is justified. (AY. 2014-15)
Mayor Foundation v. CIT (2024)469 ITR 562 (P&H)(HC)

S. 68 : Cash credits-Gift from third parties -Genuineness of gifts had not been proved -Preponderance of probability -Order of Tribunal is affirmed. [S. 260A] 947
Affirming the order of the Tribunal the court held that there was no pre-existing relationship or circumstances disclosed which might have given rise to any gift to assessee, merely because the assessee may have been able to establish that such gift was received through bank channel and merely because the donors may not have disputed the gift made is not enough to establish genuineness of the transaction. (AY. 2000-01)
Mohit Agarwal v. CIT [2024] 162 taxmann.com 550 (All)(HC)

S. 68: Cash credits-Burden of proof-Onus of proving identity, genuineness of transaction and creditworthiness of investors on assessee -Failure to satisfy required conditions-Order of Tribunal is affirmed. [S. 260A] 948
Court held that the Tribunal had examined the financials of the two share subscribing companies and found that the source of investments by those two companies were also from the share capital and share premium raised by them while issuing their own shares to other closely held companies and those companies had no noticeable business activities. On consideration of the documents, it was not satisfied with the genuineness of the transactions and also found that the assessee itself had claimed that there was no noticeable business activity during the year and had correctly concluded that the assessee had failed to establish the basic ingredients of identity, genuineness and credit worthiness of the investors as required to be established under section 68. The amount of share application money received along with the premium which remained unexplained had been rightly added back to the income of the assessee under section 68. Court also observed that the burden of proof on the assessee would include the proof of identity of the investor, the capacity of the investors to advance the money and the genuineness of the transaction. The assessee has to prove these three factors by producing acceptable evidence and only then the onus shifts on the Department. (AY. 2012-13)
Balgopal Merchants Pvt. Ltd. v. PCIT (2024)468 ITR 136/242 DTR 381 (Cal)(HC)

S. 68: Cash credits-Share premium -Proved identity and creditworthiness of investor and genuineness of transactions-Order of Tribunal confirming the addition is set aside. [S. 143(1), 147, 148, 260A] 949
The assessee filed its return of income which was processed under section 143(1). Subsequently, the Assessing Officer issued a reopening notice on ground that the assessee had issued shares to its director at Rs. 10 whereas, shares were alloted to company WPIPL at a premium of Rs. 990. It further passed reassessment order under section 68 on account of said share premium amount. On appeal, the Commissioner

(Appeals) as well as the Tribunal also upheld the addition made by the Assessing Officer. On appeal the Court held that the assessee had produced various documents including copies of bank statements of Walden Properties Investment Pvt Ltd. (WPIPL) copies of share certificates, copy of its annual return filed before Registrar, copy of assessment order under section 143 read with section 153C in case of WPIPL. Assessee had also annexed balance sheet of WPIPL which showed that it had taken term loan of huge amount. WPIPL also had reserves and surpluses of huge amount and its investments in various mutual funds, national savings scheme and equity shares including investment with assessee was also of huge amount. Transfer of funds was made through bank transactions. Accordingly, on facts, assessee had proved identity and creditworthiness of investor and genuineness of transactions and, thus, impugned addition under section 68 made on account of share premium received by assessee is set aside. (AY. 2008-09)

Cornerstone Property Investments (P.) Ltd v. ITO (2023) 152 taxmann.com 256 (Karn)(HC)

Editorial: Delay of 325 days, SLP of Revenue is dismissed, ITO v. Cornerstone Property Investments (P.) Ltd. (2024) 300 Taxman 85 (SC)

950 **S. 68: Cash credits-Established identity capacity and genuineness of Transactions -Order of Tribunal is affirmed-No substantial question of law. [S. 133(6), 260A]**

Assessing Officer treated unsecured loans taken by assessee from fifteen parties as unexplained cash credits under section 68. CIT(A) affirmed the order of the AO. Tribunal deleted addition holding that assessee had discharged initial burden placed upon him under section 68. On appeal the Revenue submitted that Tribunal without proper analysis of facts of case had passed a perverse order and same amounted to substantial question of law. Court held that since Tribunal had dealt with all grounds raised by revenue in order and had passed a well-reasoned and speaking order taking into consideration all material available on record, Court refrained from entertaining appeal as there was no perversity in order passed by Tribunal.

PCIT, Central v. Mukul Kakar (2024) 300 Taxman 618 (MP)(HC)

951 **S. 68: Cash credits-Share application money-Failure to prove identity, genuineness and creditworthiness of investor entities-Tribunal without examining facts in depth deleting addition-Order is perverse-Order of Commissioner (Appeals) upholding addition is restored. [S. 260A]**

Allowing the appeal of the Revenue the Court held that the order passed by the Tribunal was set aside and the order passed by the Commissioner (Appeals) was restored. The Commissioner (Appeals) had analysed the three principles which were required to be fulfilled, namely identity, creditworthiness and genuineness of the transactions. It was not in dispute that the investors were all either group companies or had common set of directors. The Commissioner (Appeals) had proceeded to analyse the data which was made available in the form of return of income, bank statements, etc., and found that the investors had purchased the shares at a premium. The fixing of rate for premium was arbitrary and devoid of any financial or accounting rationale. On analysing the data which was available it was seen that each of the companies had invested in each other and the investments had been made by rotating funds from one account to another. The

assessee had not been able to explain as to why the investor companies had applied for shares in the assessee's company at a high premium even though the face value of the share was Rs. 10 per share. The pattern of transactions clearly showed that these investor companies had raised capital by issue of shares at a very high premium and the transaction was repetitive. Therefore, the mere fact that the transactions were through banking channels or that the companies were Income-tax assessees or registered with Registrar of Companies could in no manner be sufficient to discharge the onus under section 68. The Tribunal did not examine the factual matrix in depth and in the manner it ought to have been done. Therefore, the findings rendered by the Tribunal that the assets in the form of investments had been created through rotating of money in between the group companies and the assets mainly consisted of cash and, cash equivalents were not enough to prove that any unaccounted money of the assessee had been introduced in the assessee warranting addition under section 68 were perverse. The addition made under section 68 for the assessment year 2012-13 is justified. (AY. 2012-13)

PCIT v. BST Infratech Ltd. (2024) 340 CTR 132 / 237 DTR 545/ 468 ITR 111 / 161 Taxmann.com 668 (Cal)(HC)

S. 68 : Cash credits-Long-term capital gains-Penny stock-Sunrise Asian Ltd-Exemption-Information from Investigation Wing-Presumptions is not corroborated by evidence-Order of Tribunal deleting the addition is affirmed. [S. 10(38), 45, 115BBE, 133(6), 260A] 952

The assessee claimed long-term capital gains under section 10(38) of the Income-tax Act, 1961 which included the sale transactions effected during the year on the scrip named Sunrise Asian Ltd. During the assessment proceedings the Assessing Officer called for information under section 133(6) from the Bombay Stock Exchange. The Assessing Officer found that the assessee had purchased shares of one CT directly from the company on August 21, 2011 and sold the shares of Sunrise Asian Ltd. The assessee explained that Conart Traders Ltd. was later amalgamated with Sunrise Asian Ltd. by a court order dated January 24, 2013. The Assessing Officer based on the information received from the Investigation Wing and considering the assessee's submissions made an addition towards unexplained unaccounted income and brought it to tax under section 115BBF. The Commissioner (Appeals) confirmed his order. The Tribunal, on the facts, deleted the addition holding that charging of tax at the rate of 30 per cent under section 115BBE was not applicable. On appeal dismissing the appeal, that the Tribunal had arrived at a finding that shares of Sunrise Asian Ltd. sold by the assessee could not be doubted as bogus and exemption under section 10(38) was rightly availed of by the assessee and that the presumption drawn by the Assessing Officer was not corroborated by any evidence to establish the alleged non-genuine transaction by the assessee. The Tribunal had considered the fact that the assessee had held the shares for a long period of two and half years and sold them, which was not even found to be rigged by the Securities and Exchange Board of India and had rightly held that the claim of the assessee for exemption of long-term capital gains under section 10(38) was not bogus. The Tribunal had also considered the decision in *PCIT v. Jagat Pravinbhai Sarabhai (2023) 21 ITR-OL 366 (Guj)(HC)) 2022 SCC OnLine Guj 2619*. The Tribunal was justified

in deleting the addition of sale proceeds of the shares on account of unexplained income under section 68. (AY. 2014-15)
PCIT v. Divyaben Prafulchandra Parmar (2024)467 ITR 146 (Guj)(HC)

953 **S. 68: Cash credits-Sundry credits and unsecured Loans-Responding to notice under Section133(6) and confirming transactions through banks in their statements under Section 131-Order of Tribunal is affirmed-No substantial question of law. [S. 131, 133(6), 260A]**
Dismissing the appeal of the Revenue the Court held that the Tribunal had correctly evaluated the facts and had rightly deleted the additions made under section 68 on account of sundry creditors and unsecured loans. The transactions are through banks, the parties have responded to notice under section 133(6) and in their statement under section 131 of the Act. (AY. 2013-14)
PCIT v. Topline Buildtech Pvt. Ltd. (2024)467 ITR 270/ 300 Taxman 54 (Delhi)(HC)

954 **S. 68: Cash credits-Capital gains-Long term capital gains on sale of shares-Demat account for more than 12 months-Entry Operator -Sold through stock exchange after payment of security transactions tax -Denial of opportunity of cross examination -Entitle to exemption -Tribunal is justified in deleting the addition -No substantial question of law. [S. 10(38), 45, 69, 131(1), 133A, Art. 136]**
Assessee filed its return for relevant year. Subsequently, pursuant to a survey assessee filed revised return and claimed exemption in respect of long-term capital gains on shares under section 10(38). Assessing Officer rejected assessee's plea and made additions under sections 68 and 69 by relying on statements from entry operators. On appeal, Commissioner (Appeals) accepted assessee's claim, noting that shares were purchased via Account Payee Cheques, held in a Demat Account for over 12 months, and sold through a recognized stock exchange after payment of security transaction tax. Tribunal upheld Commissioner (Appeal)'s decision, emphasizing assessee's right to correct mistakes and criticized Assessing Officer's reliance on statements from entry operators to support additions under sections 68 and 69 as those statements were recorded in unrelated proceedings before survey on assessee, and assessee was not afforded an opportunity to challenge or cross-examine providers of those statements. On revenue's appeal, High Court confirmed order of Tribunal. (AY. 2014-15)
PCIT v. Kuntala Mohapatra (2024)466 ITR 47/338 CTR 374 /160 taxmann.com 567 (Orisa) (HC)
Editorial: SLP of Revenue is dismissed, (2024) 298 Taxman 545 /466 ITR 50 (SC)

955 **S. 68: Cash credits -Agriculturist-Cash deposit in foreign bank in Geneva-Bank account belonged to his nephew residing in U. K-Deletion of addition is affirmed. [S. 69, 260A]**
The Assessing Officer has made addition on the ground that the assessee had deposited huge amount in his foreign bank account in Geneva during year, however, he had not filed his return of income and also not explained source of said amount deposited. Assessee contended that said bank account in Geneva was not his and that amount in said account belonged to his nephew who was residing in U. K and he had got his signatures on some papers when he was in India and that assessee was having 10 acres

of land and had no other source of income. On appeal the Tribunal held that there was no material on record to show that amounts were deposited by assessee as bank account was opened on 25-3-2003 and assessee had not visited Geneva in said year and further his name was struck off from said account in 2004 much prior to his visit in 2006. Further, justifiable explanation was given by assessee that his nephew had got his signatures. On appeal by the Revenue the Court held that assessee being an agriculturist and only having a small holding of land apparently could not be in possession of such huge amounts which were also in foreign currency. Also, nothing as such was produced on record that money was transferred in said account from India where assessee was doing his business. On the facts of the case, addition made on account of amount deposited in foreign bank account in hands of assessee was unjustified. (AY. 2006-07, 2007-08]

PCIT v. Joginder Singh Chatha (2023)156 taxmann.com 509 / (2024) 300 Taxman 603 / 336 CIT 232 / 469 ITR 142 (P& H) (HC)

S. 68: Cash credits-Unsecured loans -Statement in the course of search-Praveen Kumar Jain-Accommodation entries -Confirmation is filed-Loan received and repaid by account payee cheque-Order of Tribunal deleting the addition is affirmed. [S. 260A] 956

The Assessing Officer based on search and seizure action conducted on one Praveen Kumar Jain who had stated that he had provided accommodation entries to a few beneficiaries, one of which was the assessee, treated the unsecured loans taken by the assessee from two companies as fake and added the same as unexplained cash credit under section 68. CIT(A) deleted the addition. Tribunal affirmed the order of the CIT(A). High Court affirmed the order of Tribunal. No substantial question of law. (AY. 2007-08, 2012-13)

PCIT v. Bairagra Builders (P.) Ltd. (2024) 299 Taxman 460 (Bom.) (HC)

S. 68: Cash credits –Principle of natural justice-Adjournment application is not considered-Order is set aside [S. 143(3), Art. 226] 957

Assessee was issued with a show cause notice proposing addition to its income. Since assessee was not ready with reply, it requested for adjournment. The Assessing Officer has passed the order without giving assessee an opportunity to reply by granting adjournment. On writ the Court held that the Assessing Officer passed assessment order by making addition. On writ the Court held that since order had been passed in violation of principles of natural justice, same was set aside. (AY. 2018-19) (SJ)

Dinamalar v. ACIT (2024) 299 Taxman 406 (Mad.)(HC)

S. 68: Cash credits-long term capital gains-Penny stock-Bogus claim-Sulabh Engineers & Services Ltd-Order of Tribunal is affirmed-High Court cannot be converted into an Appellate Tribunal to examine the factual issue which was not placed before the Tribunal or lower Authorities-No substantial question of law. [S. 45, 260A] 958

Assessee, involved in trading shares of certain company made a long-term capital gain claim, which was found bogus by Commissioner (Appeals) after examining factual aspects and modus operandi. Tribunal upheld Commissioner (Appeals)'s findings. In appeal the assessee contended that new documents obtained under Right to Information Act should be considered for re-examination by Tribunal or Commissioner (Appeals).

Assessee also relied on an adjudicating order passed by SEBI. Dismissing the appeal the Court held that High Court, while exercising jurisdiction under Section 260A, could not re-examine factual issues not presented before lower authorities. Further reliance placed on order passed by adjudicating authority of Securities and Exchange Board of India (SEBI) was thoroughly misplaced since said order did not examine specific transaction done by assessee with respect to shares of company in question. Therefore, there was no grounds to interfere with order passed by Tribunal and no substantial question of law arose for consideration. High Court exercising jurisdiction under Section 260A is required to consider as to whether any substantial question of law has arisen for consideration and High Court cannot be converted into an appellate Tribunal to examine factual issue which was never placed by assessee before Assessing Officer or before Commissioner (Appeals) or before Tribunal. Tribunal followed *Shyam Sunder Bajaj v. ITO (2023) 198 ITD 253 (Kol)(Trib)* (AY. 2015-16)
Manoj Jain (HUF) v. ITO (2024) 299 Taxman 456 (Cal.) (HC)
Editorial: SLP of assessee is dismissed, Manoj Jain (HUF) v. ITO (2024) 301 Taxman 398 (SC)

959 **S. 68: Cash credits-Share application money-Test of creditworthiness and genuineness failed to prove-Addition is affirmed. [S. 260A]**
Allowing the appeal of the Revenue the Court held in three companies, transaction failed to meet test of creditworthiness and genuineness. Assessing Officer held that transaction in question had not met triple test, namely, establishment of identity, creditworthiness of creditor, and genuineness of transaction. The High Court held that the Tribunal somehow did not deem it fit to inquire as to why more than 50 per cent of the amount raised by the assessee was invested by it in the three companies & the Tribunal, as a matter of fact, did not inquire into the financials of investor companies and, therefore, the test of creditworthiness was also not met in the instant case. Thus, the finding of the Tribunal that the assessee had discharged its onus is perverse & the Tribunal was wrong in deleting the addition made by the Assessing Officer. Tribunal's order is set aside. (AY. 2000-01)
CIT v. Mayank Service Ltd [2024] 463 ITR 119 (Delhi) (HC)

960 **S. 68: Cash credits-Share application money-Identity, creditworthiness and genuineness of transaction established-Order of Tribunal deleting the addition is affirmed. [S. 260A]**
Dismissing the appeal of the Revenue the Court held that the assessee has established the identity, creditworthiness and genuineness of transaction established. Order of Tribunal deleting the addition is affirmed. No substantial question of law. (AY. 2012-13)
PCIT v. Narsingh Ispat Ltd. (2024)463 ITR 566 (Cal)(HC)

961 **S. 68 : Cash credits-Shares to promoters at premium -Income from other sources -Share premium cannot be assessed as revenue receipt even if assessee had breached provisions of section 78(2) of Companies Act, 1956, it would be penalised by provisions of Companies Act and breach would never turn share premium amount received into a revenue receipt -Share premium cannot be assessed as income from other sources. [S. 56,260A, Companies Act, 1956, S 78(2)]**
Assessee issued shares to its promoters at premium, one of which was an Indian entity

and other was a foreign promoter. Assessing Officer treated entire share premium received as unexplained cash credit under section 68 on ground that there was violation of provisions of section 78(2) of Companies Act, 1956. On appeal, the Commissioner (Appeals) upheld the order of the Assessing Officer. On appeal, the Tribunal directed the Assessing Officer to examine whether there was violation of provisions of section 78(2) of the Companies Act, 1956. On appeal, High Court held that there was nothing on record in balance sheet of assessee which showed that share premium was utilized for purposes other than what was prescribed in section 78(2) of Companies Act, 1956. Also closing balance and opening balance of share premium money only indicated that there was increase in share premium account by way of infusion of funds. Court held that Income-tax Act does not stipulate that non-compliance of any provision of other Act would result in turning a capital receipt into a revenue receipt. Even if assessee had breached provisions of section 78(2) of Companies Act, 1956, it would be penalised by provisions of Companies Act and breach would never turn share premium amount received into a revenue receipt. Assessing Officer also treated entire share premium received as unexplained cash credit under section 68 on ground that there was no justification for charging share premium. Court held that money received on issue of shares at premium is on capital account and would not give rise to any income and there was no provision under Act to tax receipt of share premium for assessment year under consideration. CBDT Instruction No. 2/2015, dated 29-1-2015 Referred *Vodafone India Services (P.) Ltd. v. UOI [2015] 228 Taxman 25/ [2014] 368 ITR 1 (Bom)(HC)* (AY. 2011-12)

Shendra Advisory Services (P.) Ltd. v. Dy. CIT (2024) 298 Taxman 261 (Bom.) (HC)

S. 68: Cash credits-Accommodation entries-Sub broker-Applying the peak credit principle on estimate of 2 per cent as brokerage in respect of cash deposits, whichever is higher -Order of Tribunal is affirmed. [S. 260A] 962

The assessee is a sub broker who is engaged in the business of providing accommodation entries. The Assessing Officer added entire cash deposited in various bank accounts under section 68 of the Act. CIT(A) upheld the addition. On appeal the Tribunal determined the income applying the peak credit principle, which included brokerage income at the rate of 2 per cent and deleted the addition under section 68 of the Act. Tribunal held that in the case of Praveen Kumar Agarwal (Principal broker), the ITAT held that either 2% of the commission or the peak credits during the block period whichever is higher. On appeal the Court affirmed the order of the Tribunal. (AY. 2005-06)

CIT v. Pramod Sharma (2024) 298 Taxman 128/468 ITR 258/ 343 CTR 798 (Cal.) (HC)

S. 68: Cash credits-Un secured loan from Magunta exports-Return showing nil income -Duty of CIT(A)-Duty to give reasons for order-Order of CIT(A) confirming the addition is set aside-Matter remanded to the file of the CIT(A). [S. 115BBE, 250, Art. 226] 963

Assessing Officer made addition under section 68 in respect of loans received from Magunta exports on the ground that lender has filed nil return. On appeal the CIT(A) accepted all conclusions of Assessing Officer and rejected appeal. On writ the Court held that since there was nothing to indicate that appellate authority independently applied its mind while drawing conclusions, impugned order was to be set aside and

matter was to be remanded back to appellate authority for disposal afresh. (AY. 2020-21) (SJ)
Sohan Raj Khanted Guvanthraj v. CIT (Appeals), NFAC, New Delhi (2024) 297 Taxman 143/337 CTR 978 /467 ITR 547 /236 DTR 281 (Mad.) (HC)

964 **S. 68: Cash credits -Sale of gifted jewellery -Order of Tribunal confirming the addition is deleted –Method of accounting -Ad hoc addition -Order of Tribunal is set aside. [S. 145, 260A]**
Allowing the appeal the Court held that, since assessee had offered explanation based on documentary evidences and evidences so filed by assessee were not found to be ingenuine or fake, genuineness of sale transaction of jewellery could neither be disputed nor section 68 could be invoked to make addition in income of assessee. The assessee is in the business of various commodities and he disclosed gross profit rate of 4. 6 per cent. Assessing Officer increased gross profit rate to 6 per cent and made addition of Rs. 30. 19 lacs in gross profit of assessee. Tribunal made an ad hoc addition of Rs. 4 lacs to gross profit of assessee. On appeal the Court held that since no reason whatsoever had been assigned by Tribunal to make addition of Rs. 4 lacs to gross profit of assessee and even it had not recorded any finding based on any material so as to disbelieve gross profit rate disclosed by assessee, addition of Rs. 4 lacs are set aside. (AY. 2005-06)
Sanjay Saha v. CIT (2024) 297 Taxman 345/338 CTR 485 (Cal.)(HC)

965 **S. 68: Cash credits -Proved genuineness of transactions-Order of Tribunal deleting the addition is affirmed. [S. 260A]**
Held the assessee has proved the, genuineness of transactions by filing copy of Income-tax returns, audit report, balance sheet etc. Having essentially arrived at such findings based on facts, no substantial question of law, much less any substantial question of law arose. (AY. 2014-15)
PCIT v. Karnavati Merchandize Pvt. Ltd. (2024)462 ITR 178 (Guj)(HC)

966 **S. 68 : Cash credits-Share capital -Ready to submit relevant documents-Matter remanded to Assessing Officer for fresh consideration. [S. 260A]**
On appeal the Court held, that the main reason given by the Tribunal in the orders dismissing the appeals was that nothing was produced by the assessees to prove that the investments in the shares of group companies by them were out of the explained investments. In view of the submission made by the assessees that they were ready to submit the relevant documents, the matter was remanded to the Assessing Officer for fresh consideration. There was no objection by the respondent. Therefore, the questions of law raised in all the appeals were left open. (AY. 2012-13 to 2014-15)
Chandan Credits Ltd. v. ACIT (2024)462 ITR 171 (Mad)(HC)
Gugnani Leasing and Hire purchase Pvt Ltd v. ACIT (2024)462 ITR 171 (Mad)(HC)
Growth Hire and Purchase Finance Ltd v. ACIT (2024)462 ITR 171 (Mad)(HC)
Lokesh Secfin Pvt Ltd v. ACIT (2024)462 ITR 171 (Mad)(HC)

S. 68: Cash credits-Share transactions-Tribunal misdirected itself and made an addition on presumptive income-Matter remanded back for de novo examination. [S. 254(1)] 967
Held that the Tribunal misdirected itself on facts and in law, in directing the addition on the ground that it represented an unexplained cash deposit, without having regard to the loss suffered by the assessee while trading in equities and commodities. Hence, the matter was remanded to the Tribunal for a de novo examination. (AY. 2011-12)
Dinesh Dahiya v. PCIT (2024) 296 Taxman 317 / 461 ITR 374 (Delhi)(HC)

S. 68: Cash credits-Sale of shares-Bogus loss-Penny stocks-Payments made through banking channel -No evidence of agreement to convert unaccounted money by taking fictitious loss-Order of Tribunal deleting the addition is affirmed-No substantial question of law. [S. 260A] 968
The Hon'ble High Court dismissed the appeal filed by the revenue and concurred with the findings of the Hon'ble Tribunal, thereby, holding that the shares were purchased online in demat account, payments were made through banking channel and consideration was also received through bank channels. Further, it was also noted that the Assessing Officer does not have any independent source or evidence to show that there was an agreement between the assessee and any other party. Thus, in absence of any specific finding, the assessee cannot be held to be linked to the wrong acts merely based on surmises and assumptions. (AY. 2012-13)
PCIT v. Champalal Gopiram Agarwal (2023)155 taxmann.com 66 / (2024) 460 ITR 277 (Guj)(HC)

S. 68: Cash credits-Creditworthiness established-Some of the lenders replied in notice issued by the Assessing Officer-Order of Tribunal deleting the addition is affirmed. [S. 133(6), 260A] 969
The AO had made an addition u/s. 68 of the Act and disallowed interest by relying on answers given to certain questions and ignoring details submitted by the assessee. The CIT(A) deleted the addition by relying on the decision in the case of *CIT v. Dataware (P.) Ltd. [ITAT No. 263 of 2011, dated 21-9-2011]* and allowed the appeal filed by the assessee. The Tribunal upheld the deletion by giving elaborate reasons as to how the creditworthiness of the lenders had been established. Therefore, the High Court dismissed the appeal filed by the Revenue challenging the order passed by the Tribunal on the ground that the AO had brought on record about the non-existence of the lenders. (AY. 2015-16)
PCIT v. Overtop Marketing (P.) Ltd. (2023) 461 ITR 67 /148 taxmann.com 94 (Cal) (HC)

S. 68: Cash credits-Long term capital gains-Penny stock-Not subjected to any enquiry by SEBI-Sold through DMAT account-STT paid-Purchased at a rate as low as Rs. 2. 5/-to Rs. 3/-per share and they were sold at a rate extremely as high as Rs. 125/-to Rs. 185/-per share-Order of Tribunal deleting the addition is affirmed. [S. 10(38), 45, 260A] 970
The assessee purchased shares Ramkrishna Fincap Ltd. (RFL) at par in February 2004 and dematerialised the same immediately in March 2004. Purchase of these shares happened in the off market and not through exchange. Payments were not done through banking channels. The shares were purchased at a rate as low as Rs. 2. 5/-to Rs. 3/-per

share in February 2004 and they were sold at a rate extremely as high as Rs. 125/-to Rs. 185/-per share in the Kolkata Stock Exchange. The AO made addition of Rs. 1,03,33,925/- u/s. 68 of the Act. The AO held the financials of RFL are too weak to command such a high price and, therefore, he came to the conclusion that the transactions related to the shares were sham and not genuine. It is a case of colourable device. On appeal the CIT(A) deleted the addition. On appeal by the Revenue on behalf of the assessee, it was contended that there is no iota of deficiencies of any kind found by the AO with regard to the documentation i. e. purchase and sale bills, contract notes, cheque payments, SEBI transactions etc. It is a straight case of buying shares of RFL though bona fide transactions involving the stock exchange and selling of the same for earning long term capital gains. The gains are exempt from tax. The AO has not brought out any incriminating evidence or material to demonstrate that the transactions are sham or bogus or entered with any mala fide intentions of converting unaccounted money into accounted gains. Dismissing the appeal of the Revenue the Tribunal held that the decision of the AO is not valid and appropriate as there is no adverse criticism on the relevant documentation involving these share transactions. There is no allegation against the assessee individually as involved in price rigging. Accordingly, the Tribunal affirmed the order of the CIT(A). On appeal High Court affirmed the order of the Tribunal and dismissed the appeal of the Revenue. (Arising out of ITA Nos 5182 & 5183/Mum/2011 dt. 9-9-2016) (AY, 2005-06, 2006-07) (ITA No. 2012 of 2017 dt. 4-3-2022) (AY. 2005-2006)
PCIT v. Ziauddin Walve (Bom)(HC) www.itatonline.org

971 **S. 68: Cash credits-Share premium-Identity and credit worthiness established – Purchases from unregistered dealers-Gross profit declared-Order of Tribunal is affirmed. [S. 260A]**

Held that the Tribunal has rightly held that the provisions of sec. 68 of the Act cannot be invoked, more particularly when the addition is made on account of the share premium and the share application money by the investors whose identity, creditworthiness and genuineness is proved by the assessee before the authority. In respect of the purchases, the Bench held that the assessee has already declared gross profit as a whole including the purchases from registered parties @ 5. 76%, and therefore, if any addition is to be made, it should be the difference between the profit determined by the Assessing Officer on the URD purchases vis-a-vis the gross profit already declared by the assessee. Hence, the appeal dismissed. Referred, *PCIT v. NRA Iron and Steel Co. (P) Ltd. (2019) 103 taxmann.com 48 (SC) / 262 Taxman 74 (SC) / 412 ITR 161 (SC)* (AY. 2011-12)
PCIT v. Siyaram Metals Udyog (P.) Ltd. (2023) 156 taxmann.com 432/ (2024) 296 Taxman 94 /465 ITR 340 (Guj)(HC)

972 **S. 68: Cash credits-Survey-Loose sheets-On money-Merely on the basis of rough noting made on loose sheets addition cannot be made. [S. 132(4A), 133A, 292C]**

Held that merely on the basis of rough noting made on loose sheets addition cannot be made, without making an independent inquiry from the buyers of the flat. (AY. 2014-15 to 2017-18) (ITA No. 362-365 /Bang/ 2024 dt. 20-9-2024)
Ace Developers v. DCIT (2024) Chamber's Journal-October-P. 83 (Bang) (Trib)

S. 68: Cash credits-Capital gains -Sale of shares-Received by gift-Stamp duty paid -Sale consideration cannot be assessed as cash credit-Assessable as long-term capital gains. [S. 45, 49(1)] 973

Tribunal held that sale of shares received by way of gift cannot be assessed as cash credits. Gain assessable as long-term capital gains. (AY. 2015-16)

Deepa Pamnani (Ms) v. ITO (2024) 230 TTJ 897 / 241 DTR 170 / 38 NYPTTJ 814/ [2025] 170 taxmann.com 163 (Mum) (Trib)

S. 68 : Cash credits -Share application money -Statement of Shri Pravin Kumar Jain -All evidences are produced -Merely on the basis of statement of Shri Pravin Kumar Jain additions cannot be made. [S. 132(4) 133(6)] 974

Held that the assesseee has discharged the burden by providing the source of investment and creditworthiness. The Tribunal also held that merely on the basis of Statement of Shri Pravin Kumar Jain, addition is not justified. (AY. 2009-10) (ITA No. 168/Mum/ 2023 dt 12-12 2023)

Savita Mercantiles Pvt Ltd v. ITO (2024) Chamber's Journal-February-P 101 (Mum)(Trib)

S. 68 : Cash credits-Share capital-Share premium-Identity and genuineness is proved -Order of CIT (A) deleting the addition is affirmed-Reassessment-Change of opinion -Reassessment is quashed-Commercial decision-Subsidiary-Deemed company in which the public are interested-Provisions of Section 56(2) (viib) is not applicable. [S. 2(18), 52(2) (viib), 147, 148] 975

Tribunal held that the assessee has proved the Identity and genuineness is proved. Order of CIT (A) deleting the addition is affirmed. Reassessment is quashed as the AO has applied his mind. Reassessment on the basis of change of opinion is not permissible. The assessee is subsidiary of EC Ltd in which the public are substantially interested within the meaning of S. 2(18) hence provisions of S. Section 56(2) (viib) is not applicable. (AY. 2011-12 to 2014-15, 2017-18)

Aadhaar Wholesale Trading & Distribution Ltd v. ACIT (2024) 230 TTJ 804 / 240 DTR 273 / 38 NYPTTJ 482/ 167 taxmann.com 526 (Mum)(Trib)

S. 68: Cash credits-Share application money-Filed copy of PAN card, share application form, allotment advices, relevant bank statements, returns for the relevant assessment year, audited financial statements, etc -Established identity and creditworthiness -Summons complied with-Reply to notice u/s 133(6)-Order of CIT(A) deleting the addition is affirmed. [S. 131, 133(6)] 976

Tribunal held that the assessee has filed copy of PAN card, share application form, allotment advices, relevant bank statements, returns for the relevant assessment year, audited financial statements, etc and Established identity and creditworthiness. The shareholders have complied with summons and reply to notice u/s 133(6) of the Act. Order of CIT(A) deleting the addition is affirmed. (AY. 2012-13)

DCIT v. Rabindra Enterprises (P) Ltd. (2023) 37 NYPTTJ 1727 / (2024) 230 TTJ 852 / 208 ITR 349 (Kol)(Trib)

977 **S. 68: Cash credits-Long tern capital gains-Sale of shares-Penny stock-General report of investigation wing-UD Ltd.-Consideration received through online trading through BSE platform-Shares have been credited in the demat account and transferred out of demat account at the time of sale -Denial of exemption is not justified -Sale consideration cannot be assessed as cash credits. [S 10(38), 45, 68 69C]**

Held that purchase and sale transactions were carried out through banking channel and by transfer of shares. The price of the shares of the company abnormally increased during the year under consideration cannot be the sole reason to sustain the addition as cash credits. The AO has not provided anything on record to justify addition under 68 or 69C. Addition is deleted. (AY. 2014-15)

Rohit Devendra Goyal v. ITO (2024) 230 TTJ 561 / 38 NYPTTJ 477 (Mum) (Trib)

978 **S. 68: Cash credits-Loan-Produced confirmation, PANs, bank statements and acknowledgements of IT returns of the lenders-Addition is deleted.**

Held that the assessee has produced confirmation of the loans, PANs, bank statements and acknowledgements of IT returns of the lenders and also adduced evidence to show that the said loans have been repaid in the subsequent year, addition is deleted. (AY. 2014-15)

White Willow v. ITO (2024) 230 TTJ 969 / 240 DTR 193 (Surat)(Trib)

979 **S. 68: Cash credits-Brokerage on sales -Cannot be considered ad bogus-Books of account not rejected-Recovery from debtor -Advance given in earlier years-Cannot be assessed as cash credits -Business advances-Confirmations filed-Short term advances -Leger account and bank statement is filed-Cannot be assessed as cash credits -Payment made to purchase of goods-Not assessable as cash credits -Credit sales -Cannot be assessed as cash credits.**

Held that brokerage on sales which is credited in the profit and loss account cannot be assessed as unexplained credit. Amount received back by the assessee against certain advances given by it to a party in the earlier year cannot be treated as unexplained cash credit. Advance received from customers cannot be assessed as cash credits when the confirmation and bank statement is filed. Short-term advance given by the assessee to a party from its own bank account not being any kind of credit received by the assessee cannot be treated as unexplained cash credit. Payments made by the assessee for making purchases of goods which have been debited to the P&L a/c and are supported by purchases bills and bank statement cannot be reckoned as unexplained credit in the absence of specific information showing that the same were bogus purchases. Amount of sales which has been included in the revenue from operations in the P&L a/c and is supported by sales bills and ledger account and also bank statements cannot be treated as unexplained credit. (AY. 2014-15)

Trio Mercantile & Trading Ltd. v. ITO (2024) 230 TTJ 64 (UO)/ 167 taxmann.com 692 (Mum) (Trib)

980 **S. 68: Cash credits-Cash deposits-Demonetization -Sales has been accepted -Books of accounts are not rejected-Addition is deleted. [S. 133(6)]**

Held that the assessee has maintained high cash balance in subsequent years also. The cash balance and business income are reflected in the ITRs which were filed and were

available with AO to justify the hike of cash and income. The cash deposited in bank account before and after the period of demonetization has not been doubted in the assessment order. No evidence was collected by the AO from third party enquiries or verification under s. 133(6) in the assessment proceeding to rebut the submissions of the assessee. Books of accounts are not rejected. Receipts were reflected in the books and same having already been considered, the separate addition without rejecting that book results could not be made against the assessee. (AY. 2017-18)
ACIT v. Balvir Singh Tomar (2024) 231 TTJ 564 / 242 DTR 17 / 38 NYPTTJ 974 (Jaipur) (Trib)

S. 68: Cash credits -Value of property received as gift from father-Accounting entries -Addition cannot be made. 981
Held that the fair market value of the property received as gift by the assessee from his father as recorded in the books of accounts by the assessee cannot be brought to tax under S. 68. Order of CIT(A) is affirmed. (AY. 2017-18)
ITO v. Inder Jaggi (2024) 231 TTJ 768 / 38 NYPTTJ 1103 (Raipur)(Trib)

S. 68: Cash credits-Capital gains-Penny stock-Report from Investigation Wing-CI Ltd. -Shares held for five years-Neither statements are not provided nor an opportunity of cross examination-Addition is deleted-Allowed exemption. [S. 10(38), 45] 982
Held that once purchases have been admitted as genuine, then corresponding sales cannot be doubted until and unless some adverse materials are brought on record. No information was brought on record suggesting that there was an exchange of cash against the long-term capital gain shown by the assessee. Shares were sold through the stock exchange after payment of STT. Transactions have been confirmed by the brokers. Payments were received through demat account. In the absence of any specific finding against the assessee in the Investigation Wing report, the assessee cannot be held to be guilty or linked to the wrong acts of the persons investigated as far as long-term capital gain earned on sale of shares of CI Ltd. is concerned. Capital gain earned by the assessee cannot be held bogus merely based on some report/finding unearthed in case of third parties. Addition under s. 68 is deleted. (AY. 2011-12)
Jayantilal Bhagwanchand v. ITO (2024) 231 TTJ 1032 / 38 NYPTTJ 1131 (Bang)(Trib)

S. 68: Cash credits-Long term Capital gains-Report from Investigation Wing-STT paid -Primary documents to prove purchase/allotment of shares i.e., share certificate, bank statement highlighting the payment made for purchase of shares, demat statement, etc, -AO is directed to delete the addition and to allow the exemption under s. 10(38) on sale of shares. [S. 10(38), 45] 983
Tribunal held that the assessee has filed primary evidences like broker's ledger, contract notes issued by the broker, bank statement, STT paid etc. The general report/statements relied upon by the AO in no way incriminates the assessee. AO is directed to delete the addition made as cash credits and to allow the exemption under s. 10(38) on sale of shares. (AY. 2015-16)
Sheela Ashok Bafna v. ITO (2024) 231 TTJ 889 / 38 NYPTTJ 483 (Mum) (Trib)

984 **S. 68: Cash credits-Income from undisclosed sources-Cash deposits-The assessee is not the real beneficiary of banking transactions done in its bank account-0. 25 per cent of the deposits/credits made in the bank accounts held by the assessee with the society is treated as the income of the assessee. [S. 69, 115BBE]**

Tribunal held that since the Department had found that the co-operative credit society Renukammata Multi State Co-Operative Urban Credit Society Ltd. had opened and was operating several bank accounts in the names of various depositors who were mere name-lenders and persons of low means and thereafter such bank accounts were operated by other persons/real beneficiaries for carrying out various dubious activities, it is evident that the assessee was not the real beneficiary of such banking transactions done in its bank account with Renukammata Multi State Co-Operative Urban Credit Society Ltd and, therefore, 0. 25 per cent of the deposits/credits made in the bank accounts held by the assessee with Renukammata Multi State Co-Operative Urban Credit Society Ltd, could be treated as the income of the assessee. (AY. 2015-16 to 2017-18)

Kaushik Pravinchandra Gohel v. AO (2004) 231 TTJ 1 (UO)(Ahd)(Trib)

985 **S. 68: Cash credits-Capital account-Partner-Difference-Matter remanded to the AO for verification-Sundry creditors-Filed confirmation-Addition is deleted-Unexplained investment-Project-Merely on the basis of report of the inspector addition cannot be made. [S. 69]**

As regards difference in partners' capital account, matter is remanded to the AO for verification. As regards sundry creditors, the assessee has filed the confirmation hence, no addition can be made. Tribunal held merely on the basis of report of the inspector addition cannot be made in respect of investment in project. (AY. 2013-14)

DCIT v. D. S. Developers (2024) 230 TTJ 25 / 238 DTR 369 / 38 NYPTTJ 141 (Jodhpur)(Trib)

986 **S. 68: Cash credits-Accommodation entries-Entry operator-Dummy companies -Statement of former director-Not specifying the name of the assessee-Filed confirmation letter, PAN, financial statements, copy of income tax return-Interest paid -Loan is treated as genuine-Addition is deleted. [S. 131, 133(6)]**

Held that the assesseee has filed confirmation letter, PAN, financial statements, copy of income tax return, interest paid. Merely on the basis of statement of former director wherein he has given general statement and not specified the name of the assessee. The loan from Magapode Vyaaper (P) Ltd cannot be assessed as cash credits. Addition is deleted. (AY. 2014-15)

DCIT v. Jain Carrying Corporation (2024) 230 TTJ 589 / 38 NYPTTJ 546 (Jodhpur)(Trib)

987 **S. 68 : Cash credits-Cash deposits in bank account-demonetization period-Sales not doubted-Books of account not rejected-Addition is sustained only of 10 per cent of cash deposit to avoid the possibility of revenue leakage-Liable to be assessed as normal rate and not enhance rate as per S. 115BBE of the Act. [S. 115BBE]**

Held that when the purchases and sales were not doubted, books of account are not rejected cash deposited in bank cannot be assessed as cash credits. Tribunal sustained

only of 10 per cent of the cash deposit to avoid the possibility of revenue leakage and Liable to be assessed at the normal rate and not enhance rate as per S. 115BBE of the Act. (AY. 2017-18)
Kediam Gem (P) Ltd. v. ITO (2024) 229 TTJ 344 / 236 DTR 369 / 38 NYPTTJ 397 / 164 taxmann.com 736 (Surat) (Trib)

S. 68 : Cash credits-Long term capital gains-Allegation by SEBI-Price manipulation -Contract note of shares, demat details, details of bonus shares, etc. were filed -Denial of exemption is not justified. [S. 10(38), 45] 988
Held that A sale of shares through Bombay Stock Exchange and paid securities transaction tax and produced complete evidence of purchase and sale of shares including the contract note and demat details, and the AO having made no adverse comments against such evidence, it cannot be said that the share transactions were not genuine merely because there was some allegation and investigation was made by SEBI against the company and therefore, there was no justification in treating the LTCG as unexplained cash credit. Followed *PCIT v. Indravaden Jain (HUF) [IT Appeal No. 454 of 2018, dt. 12th July, 2023 (Bom)(HC)], CIT v Himani M. Vakil (2014) 41 taxmann.com 425 (Guj) PCIT v. Parashen Kasturchand Kochar (2021) 130 taxmann.com 177 (SC).* (AY. 2015-16)
Sanjaykumar Damjibhai Gangani v. ACIT (2024) 229 TTJ 97 (UO)/ 161 taxmann.com 606 (Surat) (Trib)

S. 68 : Cash credits-Loan-Genuineness is proved-TDS deducted-Addition is deleted. 989
Tribunal held that the assessee has proved the identity and genuineness of transaction, tax was deducted at source, copies of bank account is also filed. Addition is deleted. (AY. 2012-13)
Aman Exports International v. Dy. CIT(2024) 228 TTJ 26 (UO) (Jaipur)(Trib)

S. 68 : Cash credits -Share application money -Survey -Statement on oath -Retraction -Produced documents of all investors -Merely on the basis of statement addition is not valid-Reassessment -After the expiry of four years -Reassessment on the basis of statement in the course of survey is valid. [S. 133A, 147, 148] 990
Tribunal held that merely on the basis of statement in the course of survey addition cannot be made, when the said statement was retracted. The assessee has produced documents of all investors hence, the addition is deleted. As regards the reopening of assessment is affirmed. Relied on Circular No. 286/2/2003-IT (Inv.), dt. 10th March, 2003. (AY. 2012-13)
ACIT v. Jagannathdas Harichandmal Jewellers (P) Ltd. (2023) 37 NYPTTJ 1512 /(2024) 167 taxmann.com 17 / 228 TTJ 68 (Raipur)(Trib)

S. 68 : Cash credits -Share capital -Non-resident -Mauritius based holding company -Proviso does not apply to non-resident company -Proved identity and genuineness by filing the bank account statement of itself and the certificate of incorporation -Order of CIT(A) deleting the addition is affirmed. 991
Tribunal held, that though the proviso section 68 does not apply to non-resident company the assessee has proved identity and genuineness by filing the bank account

statement of itself and the certificate of incorporation. Order of CIT(A) deleting the addition is affirmed. (AY. 2016-17, 2018-19)
Cleartrip (P) Ltd v. DCIT (2023) 156 taxmann.com 552 / (2024) 228 TTJ 178 / 235 DTR 129 (Mum) (Trib)

992 **S. 68: Cash credits -Abnormal profit of 92 percent from sub-contracts of Government construction projects -CIT(A) failure to examine the details of works contract -Matter remanded to the Assessing Officer to examine of the genuineness of the payments received by the assessee and decide accordingly. [S. 143(3)]**
The Assessing Officer made addition under section 68 in respect of excess receipts from contract works. CIT(A) deleted the addition. On appeal the Tribunal held that the assessee has shown abnormal profit of more than 92 per cent from sub-contracts of Government construction projects and it has not provided the details of expenses relating to the works contract and the CIT(A) has filed to examine the details of works contracts. Accordingly, the matter is remitted back to the Assessee for the examination of genuineness of the payments received by the assessee. (AY. 2017-18)
DCIT v. Lepl Projects Ltd. (2024) 159 taxmann.com 709 /228 TTJ 633 / 38 NYPTTJ 276 (Hyd.) (Trib)

993 **S. 68 : Cash credits-Shares-Capital gain -Exemption-Transferred to Demat account -Amalgamated-Penny stock-Accommodation entry -Sunrise Asian Ltd. -Cross examination not provided-Order of CIT(A) deleting the addition is affirmed. [S. 10(38), 45, 69C]**
Assessee purchased shares of Conarat Traders Ltd. through P. Saji Textiles Ltd. that later on amalgamated with Sunrise Asian Ltd. The assessee sold the shares and claimed exemption. The AO denied the exemption on the ground of accommodation entries. CIT(A) allowed the exemption. On appeal the Tribunal held that the assessee has filed details of the demat account, brokers note and bank details to justify genuineness of the purchase and sale of the shares which have not been disproved by the authorities below. Assessee sold the shares held in demat account and transactions were performed on a recognised stock exchange through registered broker at the price appearing on the exchange portal. At the point of time of sale of shares, companies were not marked as shell companies by SEBI nor the trading of these scrips were suspended. No opportunity was awarded for cross-examination of the third person who was allegedly found to be providing accommodation entries. Order of the CIT(A) deleting the addition on account of disallowance of claim of exemption of long-term capital gains on sale of shares under S. 68 and commission payment under S. 69C is upheld. (AY. 2014-15)
ITO v. Hemant Gokhru (2024) 165 taxmann.com 173 / 228 TTJ 697 / 237 DTR 17 / 38 NYPTTJ 102 (Jodhpur)(Trib)

994 **S. 68 : Cash credits-Cash deposits in bank-Demonetization -period Distinction between cash credits and cash receipts towards sales-Trade advances -Subsequently converted in to sales-Cash receipts recorded in the books of account -Assessing Officer has not disputed the sales-Cash balance in the books as on 8th November 2016 is higher than the cash deposited in the Bank-Not pointed out any discrepancy in purchases or**

stock-in-trade -Purchases and sales have been accepted by GST Authorities -Need not obtain confirmation-Law does not mandate -Rule 114B, for compliance of KYC norms in respect of sales exceeding Rs 2 lakhs has become mandatory w. e. f. 4th May 2023 under the Prevention of Money Laundering Act, 2002-Order of CIT(A) deleting the addition is affirmed. [S. 115BBE, 131(1), 133(6)]

The assessee is engaged in the business of trading in gold and jewellery. The assessee has deposited cash sales in the bank account. The Assessing Officer issued summons under section 131 to 50 persons out of which 46 summons issued were returned by postal authorities citing addressee cannot be located or no such person or no such address at the above address. Out of three persons two of them denied having any transactions with the assessee and one person confirmed that he has paid the advance. As the substantial number of summons were returned back by the postal authorities by citing 'no such person' or 'insufficient address the Assessing Officer treated total cash sales as unexplained cash credit and brought to tax under section 68 of the Act read with section 115BBE of the Act. On appeal CIT(A) deleted the addition. On appeal by the Revenue the Tribunal held that the assessee furnished the names and address of the customers from whom it has received cash for sale of jewellery. Assessee need not obtain confirmation because the law does not mandate collecting PAN details of the persons if the sale value of jewellery does not exceed Rs. 2 lakhs as per R. 114B-Thus, the observation of the AO that the assessee has not satisfactorily explained cash receipts is unwarranted and devoid of merits. The assessee was having sufficient cash balance as per cash book maintained for the relevant period. Cash receipts from various persons have been substantiated with sales made to them before the date of demonetization. AO never disputed the sales declared by the assessee nor pointed out any discrepancy in purchases or stock-in-trade held in the business of the assessee before the date of demonetization. There is no abnormal deviation in the sales declared for the month of November, 2016 when compared to the earlier periods. Accordingly, the explanation of the assessee that it received advances from various customers towards sale of jewellery and subsequently the advances have been converted into sales, appears to be bona fide and reasonable. The Tribunal also held that as per the details furnished by the assessee like bank statements and cash book, assessee made sufficient withdrawals from the very same bank accounts before the date of demonetization which was recorded in its books of accounts. Cash balance maintained by the assessee as per books of accounts as on 8th Nov., 2016 was much higher than the amount of cash deposited in the bank accounts during the demonetization period. AO erred in treating the said deposits as unexplained cash credits under S. 68 of the Act. Oder of CIT(A) deleting the addition is affirmed. Followed, *Lalchand Bhagat Ambica Ram v. CIT (1959) 37 ITR 288 (SC), Lakshmi Rice Mills v. CIT (1974) 97 ITR 258 (Pat)(HC), CIT v. Agson Global (P) Ltd (2022) 325 CTR 1 (Delhi)(HC), distinguished, Sumati Dayal v CIT 1995) 214 ITR 801, 125 CTR 124, 80 Taxman 89 CIT v. Dugra Prasad More (1971) 82 ITR 540 (SC), Khale Khan Mohammad Hanif v. CIT (1963) 50 ITR 1 (SC)* (AY. 2017-18)

ITO v. Sahana Jewellery Exports (P) Ltd(2023) 157 taxmann.com 680/ (2024) 228 TTJ 942 (Chennai) (Trib)

995 **S. 68: Cash credits-Voluntary Disclosure of Income Scheme, 1997-Payment of tax was made beyond time prescribed-Investment in earlier years -Addition is deleted. [VDIS,1997]**

Held that the assessee has shown that the amount declared under VDIS 1997 on 26th Dec., 1997 represented undisclosed investments made in earlier assessment years i. e., 1991-92 to 1997-98, and not of financial year 1997-98. Addition is deleted. (AY. 1998-99)

T. R. Pachamuthu v. ACIT (2024) 165 taxmann.com 178/ 228 TTJ 760 / 236 DTR 7 (Chennai) (Trib)

996 **S. 68 : Cash credits-Capital gains-Penny stock-Information from Investigation Wing -Purchase of shares of LLDP Ltd at Rs 6 per share -Sold at Rs 283 per share after 19 months -Non genuine-Exemption denied -Assessed as income from undisclosed source. [S. 10(38) 45, 69]**

AO denied the exemption of long-term capital gains and assessed as cash credits. On appeal the CIT(A) affirmed the order of the AO. On appeal the Tribunal held that on the basis of information received from the DDI (Inv.) and this is the only transaction carried by the assessee, the fact that the assessee has meticulously completed the paperwork and routed the money through banking channel is irrelevant. Order of the AO is affirmed. (AY. 2015-16)

Anirudh Venkata Ragi v. ITO [2023] 156 taxmann.com 608 /(2024) 227 TTJ 333 / 233 DTR 201 (Hyd.) (Trib)

997 **S. 68: Cash credits-Share application-Substantial creditworthiness - Mere non-appearance of directors addition is not justified.**

Held that all the share applicants are filing their IT returns and the assessee-company has produced the share application forms and allotment letters and the bank statements of the share applicants, and all the share applicants are having substantial creditworthiness which is evident from their capital and reserves, addition under S. 68 is not sustainable. (AY. 2012-13)

ITO v. Rajshree Integrated Cold Chain (P) Ltd. (2024) 227 TTJ 513 (Kol)(Trib)

998 **S. 68: Cash credits-Share capital and share premium-Shares premium of 490 on a share with face value of Rs 10-Subscribers are not traceable-Addition is justified. [S. 68, 131]**

Tribunal held, that mere submission of confirmations and Income-tax details were not enough to justify payment of monies as share premium when the financial aspects of the recipient company would not merit such investments. While four out of the eleven share applicants were not traceable at the given addresses and one did not respond to the summons, the documents filed by the others were not sufficient in the eyes of law to discharge the burden cast upon the assessee to prove the genuineness of the transactions. Addition is affirmed. (AY. 2012-13)

Nexcare Agency P. Ltd. v. ITO (2024)116 ITR 594 (Kol)(Trib)

S. 68: Cash credits-Cash deposits-Bank-Cash sales -Demonetisation-Business of machinery parts and bearings-No discrepancy in stock register or goods and services tax returns-Addition is deleted. [S. 69A, 133A] 999

Held that the assessee had already declared the cash sales in its books of account and had explained the cash deposits, which the lower authorities had accepted as regular business transactions and had brought them to tax. Since, the cash stood recorded and explained and was already part of the book results. Addition is deleted. (AY. 2017-18)

S. Balaji Mech-Tech P. Ltd. v. ITO (2024)116 ITR 31/ [2025] 170 taxmann.com 639 (Delhi) (Trib)

S. 68 : Cash credits-Capital gains-Loss on sale of shares-Price rigging-Reports from Investigation Wing and Securities and Exchange Board of India-No independent enquiry-No incriminating material-Disallowance of loss is deleted-No exempt income -No disallowance can be made. [S. 10(38), 14A, 45, 133(6), R. 8D] 1000

Held that the Assessing Officer disbelieved the explanation merely on the basis of reports from Investigation Wing and Securities and Exchange Board of India. Neither an independent enquiry is carried by the Assessing Officer nor any incriminating material is found against the assessee. Disallowance of loss is deleted. *PCIT v. Swati Bajaj (2022) 446 ITR 56 (Cal)(HC)* is distinguished. As there is no exempt income no disallowance can be made u/s 14A of the Act. (AY. 2014-15)

Samrat Finvestors P. Ltd. v. ITO (2024)116 ITR 650 (Kol)(Trib)

S. 68: Cash credits-Unsecured loans -Failure to discharge the burden-Addition is affirmed. [S. 131, 133(6)] 1001

Held that the assessee failed to produce the bank accounts of the parties but also made no attempt to place on record copies of the lenders' bank accounts as additional evidence. The order of the CIT(A) is affirmed. (AY. 2012-13)

Santosh Chopra v. ITO (2024)116 ITR 699 (Raipur)(Trib)

S. 68: Cash credits-Long-term capital gains-Loss on sale of shares -Information from investigation wing-Not involved in price manipulation -Denial of exemption is not justified-Reassessment is affirmed. [S. 147, 148] 1002

The Tribunal held that neither the Assessing Officer nor the Commissioner (Appeals) had given any independent finding regarding involvement of assessee in price manipulation. Addition is deleted; however the reassessment is affirmed. (AY. 2011-12, 2012-13)

Sagar Jhaveri v. Dy. CIT (2024)116 ITR 28 (SN)(Ahd)(Trib)
Viki Rajesbhai Jhaveri v. Dy. CIT (2024)116 ITR 28 (SN)(Ahd)(Trib)
Aarav Financial Services P. Ltd v. Dy. CIT (2024)116 ITR 28 (SN)(Ahd)(Trib)

S. 68: Cash credits-Information from investigation wing-Amount repaid in subsequent year-Failure to produce the directors of lender companies-Need not prove source of source-Order of CIT(A) deleting the addition is affirmed. [S. 131(d), 133(6)] 1003

Held that the Assessing Officer has merely relied on Investigation Wing's report and come to the conclusion that the lender entities were not in existence. The Tribunal held,

the parties are not related. The amount was repaid in subsequent year. Merely because failure to produce the directors of lender companies, addition need not be made. The assessee need not prove source of source. Order of CIT(A) deleting the addition is affirmed. (AY. 2016-17)
Dy. CIT v. Pragyawan Technologies P. Ltd. (2024)116 ITR 9 (SN)(Delhi)(Trib)

1004 **S. 68: Cash credits-Short term deposits-Burden discharged -Addition is deleted. [S. 133(6)]**
Tribunal held that the assessee has furnishing ledger confirmation, Permanent Account Number, Income-Tax Return Acknowledgment and bank statement showing transactions of loans received. Identity creditworthiness and genuineness of transaction is established. Order of CIT(A) deleting the addition is affirmed. (AY. 2014-15)
Dy. CIT v. Rajendra Gulabchand Shah (2024)116 ITR 21 (SN)(Mum)(Trib)

1005 **S. 68: Cash credits-Identity and creditworthiness is established-Addition is deleted.**
Held that the assessee has furnished identity of lender to prove genuineness of transaction, payment of loan by cheque, filed Permanent Account Number, income-tax return and confirmation from lender and source of credit. Addition is deleted. (AY. 2016-17)
Prarthana Gems v. Dy. CIT (2024)116 ITR 49 (SN)/ 2025] 210 ITD 158 (Surat)(Trib)

1006 **S. 68: Cash credits-Gift-Opening balance-Capital account-Addition is deleted -Assessing Officer is directed to assessee-returned income-Circular No. 549, Dated 31-10-1989(1990) 182 ITR 1 (St)[S. 148]**
Held that the opening cash balance shown by the assessee, an amount was claimed to have been deposited into the bank account. The closing balance on March 31, 2015 constituted the opening cash balance on April 1, 2015 and for assessment year 2016-17, the assessee had declared her income, which was accepted by the Assessing Officer without any addition in respect of the cash gifts shown by the assessee. All these three amounts explained the sources of deposit made in assessment year 2016-17. Accordingly, as the assessee had explained the sources for making the cash deposits in assessment years 2015-16 and 2016-17, the Assessing Officer is directed to delete the addition. Returned income is directed to be accepted. Circular No. 549, Dated 31-10-1989(1990) 182 ITR 1 (St) (AY. 2011-12, 2015-16, 2016-17)
Rashida Shakil Bhati v. ITO (2024)116 ITR 44 (SN) / 168 taxmann.com 274 (Mum)(Trib)

1007 **S. 68 : Cash credits-Long term capital gains-Information from Investigation Wing -Penny stock-Accommodation entries -Purchase in the year 2010-11 -No sale during the year-Transaction cannot be assessed as bogus -Failure to mention section in the notice u/s 143(2)-Assessment order is defective -Credit for tax deduction at source -Issue is not adjudicated by Commissioner (Appeals) -The Assessing Officer is directed to verify the claim. [S. 45, 143(2), 143(3)]**
Held that the shares were purchased in financial year 2010-11, payment of securities transaction tax and service tax besides other charges to the broker. Since, the alleged

sale transaction did not take place during the year 2011-12 and nothing had been brought on record in support of the claim of the sale in that year, the transaction could not be treated as bogus. That the Assessing Officer neither mentioned the section under which the addition was made nor issued notice under section 143(2) or even serve proper show-cause notice on the assessee. The order is defective. Credit for tax deducted at source as the CIT(A) has not adjudicated the issue. The matter is remanded to the file of Assessing Officer. (AY. 2011-12)
Uttam Das v. ITO (2024)116 ITR 55 (SN)(Kol)(Trib)

S. 68: Cash credits -Time deposit –Unexplained advances -Identity of recipient and source of funds made through banking channel established -Proceeds subject to capital gains -Deletion of addition is affirmed. [S. 45] 1008
Held that source of advance sale proceeds of land is subject to capital gains tax. Identity of recipient and source of funds made through banking channel established. Order of CIT(A) deleting the addition is affirmed. (AY. 2011-12)
ITO v. Arvindbhai Ratanbhai Mokani (2024) 115 ITR 251 (Surat)(Trib)

S. 68: Cash credits -Share Capital -Share premium -Explained the source and capacity -Addition is not valid -Assessment jurisdiction -Issue of jurisdiction was not raised within stipulated time-Assessment is valid. [S. 124(3), 142(1), 143(2), 143(3)] 1009
Held that the assessee discharged the burden cast upon it by filing confirmation of share applicant, bank statement, return of income, financial statements of investor company, share application forms, Permanent Account Number, memorandum and articles of association, board resolution and return of allotment in Form 2 etc. Order of CIT(A) deleting the addition is affirmed. As regards the jurisdictional issue the assessee has not raised the issue within time of one month from date on which it was served with notice under Section 142(1) hence, the assessment is valid. (AY. 2013-14)
ITO v. Shree Banke Bihari Infracon P. Ltd. (2024)115 ITR 223 / 163 taxmann.com 344 (Raipur)(Trib)

S. 68: Cash credits -Closing balance of preceding years- Cannot be added as cash credits. 1010
Held that section 68 or 69A refers the credit found during the previous year in the books of account maintained by the assessee. Hence, the credit found on the first day or carried forward from the preceding year could not be added to the following year. Addition is deleted. (AY. 2010-11)
Naveen Bolia v. ITO (2024)115 ITR 82 (Jodhpur)(Trib)

S. 68: Cash credits -Unexplained money -Cash deposit-Demonetisation -Addition cannot be made on suspicion -Addition is deleted -Business expenditure -Disallowance of expenses on estimate basis is disallowed. [S. 37(1), 115BBE] 1011
Held that cash deposited cannot be treated as unexplained money merely on suspicion. Expenses cannot be disallowed on estimate basis. (AY. 2017-18)
Chintpuri School v. Dy. CIT (2024) 115 ITR 17 (SN)(Amritsar)(Trib)

1012 **S. 68: Cash credits -Search-Third party -Unaccounted money Admitted by third party –Cross examination is not provided -Addition is deleted. [S. 132]**
Held that when the third party admitted and addition is made in the assessment of third party, no addition can be made in respect of same amount made, especially when no cross examination is provided. (AY. 2012-13 to 2020-21)
Kiran Pal Singh v. Dy. CIT (2024) 115 ITR 33 (SN)(Delhi)(Trib)

1013 **S. 68 : Cash credits -Search and seizure -Unsecured loans -Established identity and creditworthiness of lenders and genuineness of transactions, transactions through banking Channels, sufficient funds, and assessed to tax -Unexplained investment -Sufficient cash balance -Deletion of addition by CIT(A) is affirmed –Loan carried forward from earlier year -No addition can be made -Share application money -Arithmetic error -Deletion of addition is affirmed -Consequential -Interest under section 234C only on returned income and not assessed income. [S. 69A,132, 153A, 234A, 234B, 234C]**
Dismissing the appeal of the revenue the Tribunal held that the assessee has established identity and creditworthiness of lenders and genuineness of transactions, transactions through banking Channels, sufficient funds, and assessed to tax. As regard unexplained investment the assessee had sufficient cash balance hence, deletion of addition by CIT(A) is affirmed. Loan carried forward from earlier year, no addition can be made. Share application money deletion addition due to arithmetic error. Order of CIT(A) is affirmed. Interest under section 234A and 234B is consequential, however, interest under section 234C can be charged only on returned income and not assessed income. (AY. 2011-12, 2016-17, 2017-18)
Dy. CIT v. Sushil Tyagi (2024) 115 ITR 90 (SN)(Delhi)(Trib)

1014 **S. 68: Cash credits-Unsecured loan-Proved identity of creditor, genuineness of transaction and creditworthiness of lender, confirmation filed, receipts through banking channels -Summons served-Lenders not responded -Addition is deleted. [S. 131]**
Held, that the assessee had furnished the necessary documents to prove the identity of the creditor, the genuineness of the transaction and the creditworthiness of the lender. The lender is assessed to tax and had furnished the confirmation. The loan was received by the assessee through regular banking channels. The summons issued on the lender is served on him as acknowledged by the Assessing Officer in his assessment order. Merely because the summons had not been responded to by the lender, no adverse inference could be drawn on the assessee. Addition is deleted. (AY. 2015-16)
Golden Moment P. Ltd. v. ACIT (2024) 115 ITR 87 (SN)/ (2025) 210 ITD 484 (Delhi)(Trib)

1015 **S. 68: Cash credits -Cash deposits -Demonetisation -Rejection of books of account without recording the satisfaction is not justified -Addition is deleted. [S. 145(3)]**
Held that the AO is not justified in rejecting the books of account The assessee has produced the stock register and other details. Addition as cash credits is not justified. (AY. 2017-18)
Kshetrapal Gold P. Ltd. v. ITO (2024) 115 ITR 85 (SN)(Ahd)(Trib)

S. 68: Cash credits -Cash deposit -Demonetisation period -Sale of petrol, diesel and other petroleum products -Deletion of addition is affirmed. [S. 133(6)] 1016

Held that the assessee had filed complete details of purchase register, sales register, cash book, bank statement, month-wise details of purchase and sales and copies of value added tax returns. However, the Assessing Officer was not able to find any defect in the books of account, except general statements made in the assessment order. Though the Assessing Officer had doubted the sales made during the year, he did doubt the purchases made or stock maintained by the assessee during the year. Order of CIT(A) deletion of addition is affirmed. (AY. 2017-18)

ITO v. Ashapura Petrochem Marketing P. Ltd. (2024)114 ITR 599 (Ahd)(Trib)

S. 68: Cash credits -Income from undisclosed sources -Capital gains- Penny stock -Securities transaction tax -Payments through banking channels -DMAT account -Burden discharged transactions cannot be held to be bogus -Entitle to exemption. [S. 10(38) 45, 69] 1017

Dismissing the appeal of the Revenue, the Tribunal held, that the assesseee had paid Securities transaction tax, the payments were made through banking channels and the shares are shown in DEMAT account. The assessee had discharged the burden. Denial of exemption is not justified. (AY. 2014-15)

Dy. CIT v. Pavankumar Bachhraj Chandan (2024)114 ITR 364 (Mum)(Trib)

S. 68: Cash credits-Share capital-Share premium-Loss making company -Genuineness of transaction is not proved -Addition is affirmed-Reassessment is affirmed. [S. 143(3) 147, 148] 1018

Held that the reassessment is held to be valid. Tribunal also held that the production of incorporation details, permanent account numbers, receipt of money through banking channel merely prove the identity and creditworthiness of the investors but not the genuineness of the transaction. The assessee has to discharge the onus cast upon it by demonstrating as to how the two parties were known to each other, the manner and mode by which the parties approached each other, whether the transaction was entered through written agreement as well as the creditworthiness, objects and purpose for which the investment was made. The fact that the assessee received a huge share capital or share premium from a loss-making company, triggered doubts about the genuineness of the very transaction. Further, the Assessing Officer's allegation that it was the assessee's unaccounted money had not been proved wrong. Addition is affirmed. (AY. 2011-12)

ACIT v. Prasanna Purple Mobility Solutions P. Ltd. (2024)114 ITR 62(SN)(Pune)(Trib)

S. 68: Cash credits-Cash deposits in bank account-Demonetisation-Cash sales and opening balance-Advance salary to employees -Addition is deleted. [S. 115E] 1019

Held that the assessee had cash balance available with various bank branches (per auditor's certificate) and had made cash sales on announcement of demonetisation as supported by sales bills. Addition is deleted. (AY. 2017-18)

Cottage Arts Emporium v. ACIT (2024)114 ITR 69 (SN.) (Chennai)(Trib)

1020 **S. 68: Cash credits-Sale of agricultural land-Dishonour of cheque -Receiving back advance payment by cash -Sale not materialised -No long-term capital gains -Matter remanded to for verification. [S. 45]**
Held that receipt of advance payment by cash cannot be assessed as cash credits. Long term capital gains are assessable in the year of the entire sale consideration. Matter remanded to the Assessing Officer for verification. (AY. 2015-16)
Ranveer Singh Chauhan v. ITO (2024)114 ITR 18 (SN)(Delhi)(Trib)

1021 **S. 68: Cash credits-Cash deposits -Demonetisation period -Books of account not rejected-Addition cannot be made on suspicion, conjectures-Additional ground is admitted. [S. 115BBE, 143(3), ITATR. 11]**
Held that the books of account are not rejected. Payments for purchases were made through banking channel with customs duty. Cash sales are backed by corresponding purchases, reduction in stock and declaration of profits on sales. Addition is deleted. Additional ground is admitted. The Tribunal also held that suspicion, howsoever strong, cannot take the place of proof. The powers given to the Revenue authority, howsoever wide, do not entitle him to make the assessment on pure guess without reference to any evidence or material. The assessment cannot be framed only on bare suspicion. The assessment should rest on principles of law avoiding any presumption of evasion. Followed, *Umacharan Shaw and Bros. v. CIT (1959) 37 ITR 271 (SC) and Dhakeswari Cotton Mills Ltd. v. CIT (1954) 26 ITR 775 (SC)* (AY. 2017-18)
Vijay Kumar Jain v. ITO (2024)114 ITR 20 (SN)(Delhi)(Trib)

1022 **S. 68: Cash credits-long term capital gain-Penny stock -Sale consideration cannot be assessed as unexplained cash credits. [S. 45]**
The assessee has sold shares during the year under consideration and earned long term capital gain. The sale of shares has taken place in the online platform of the Stock exchange and the sale consideration has been received through the stock broker in banking channels. The AO has not established that the assessee was involved in price rigging and further the AO did not find fault with any of the documents furnished by the assessee. The sale consideration cannot be considered to be unexplained cash credit in terms of S. 68 of the Act. (ITA No. 1922/M/2023, Dt. 21/03/2024) (AY 2014-15)
ITO v. Alpa Rajendra Jain (Mum)(Trib)(UR)

1023 **S. 68: Cash credits-Receipt of share capital/premium-Summons issued to investors returned unserved-Addition cannot be made under section 68 for the mere reason that summons issued to investors were returned unserved. [S. 131, 133(6)]**
Assessee raised share capital by issuing equity shares of face value of Rs. 10 at a premium of Rs. 90 per share. AO treated amount received by assessee as unexplained credit under section 68 on the ground that summons issued to investors under section 131 were returned unserved.
ITAT held that the assessee has filed names, address and PAN of the investors, copies of share allotment advice, share application forms, bank statements, statement giving complete details of share application money received during the year, Form No. 2 evidencing return of allotment and Form 5 for increase in authorized capital. Also, AO

issued notices under section 133(6) to all the investors for carrying out independent verification of these transactions which were duly responded by these investors by filing all the requisite details comprising shares subscribed, ledger accounts, bank statements, explanation for source of funds, ITRs, audited financial statements and also assessment order framed under section 143(3) in all the cases. AO had not pointed out any defect or deficiency in the evidences filed by assessee as well as by investors. Accordingly, no addition could be made under section 68 for the mere reason that summons issued to investors were returned unserved. [ITA No. 588/Kol/2020, dated 16/01/2023] [AY. 2012-13].

ITO v. Gitika Commodities Pvt. Ltd. (Kol)(Trib) (UR)

S. 68 : Cash credits-Fictitious transactions -Losses can be set off-Entire exercise becoming tax neutral-Derivative gain -Addition is deleted. 1024

Held that the assessee had shown revenue from operations added under section 68 of the Act and the assessee is eligible for set off to make the entire exercise tax neutral. Addition is deleted. (AY. 2014-15)

Aadinath Securities P. Ltd. v. ITO (2024)113 ITR 423 (Mum)(Trib)

S. 68 : Cash credits-Cash deposit-Demonetisation-Cash sales-Trading in jewellery -No discrepancy in books of account -Recording of customers' Permanent Account Number is not legally mandated for sales not exceeding Rs. 2 Lakhs -Source for cash deposits out of traceable source -Order of CIT(A) deleting the addition is affirmed. [S. 115BBE, R. 114B] 1025

Held that the Assessing Officer had not pointed out any discrepancy in the books of account including the cashbook, sales and purchases, nor regarding any stock deficit. The Assessing Officer made additions towards cash deposits purely on suspicion. Lack of response from customers could not be a reason to take an adverse view against the assessee when the assessee was able to furnish sufficient evidence to prove the source of the cash deposits. The Assessing Officer had committed a fundamental mistake in examining cash receipts claimed to have been received by the assessee towards the gold scheme in light of section 68. Moreover, the assessee need not submit confirmation from customers to the Assessing Officer because the law did not mandate collecting the permanent account number of the buyers if sale value of jewellery did not exceed Rs. 2 lakhs in terms of rule 114B of the Income-tax Rules, 1962. Compliance with the know your customer norms was mandatory under the Prevention of Money Laundering Act, 2002 only with effect from May 4, 2023 and not earlier. Furnishing of the names and addresses of persons from whom it had received trade advances was satisfactory discharge of the onus cast upon the assessee. Tribunal also held that the assessee had sufficient cash balance according to its cash book, which was backed by cash receipts recorded in the books of account before the date of demonetisation. Further, cash receipts were substantiated with sales made to various buyers before the date of demonetisation as supported by sales bills. Order of CIT(A) is affirmed. (AY. 2017-18)

Dy. CIT v. Dar Paradise P. Ltd. (2024)113 ITR 651 (Chennai)(Trib)

1026 **S. 68: Cash credits-Long-term capital gains-Penny stock-Magrigold Glass Industries Ltd (now known as Greencrest Financial Services Ltd) -No evidence of conversion of unaccounted money to bogus long-term capital gains -Securities and Exchange Board of India enquiry not producing anything incriminating on company or its directors-Order of CIT(A) is affirmed. [S. 10(38), 45]**

Dismissing the appeal of the Revenue the Tribunal held that the assessee had filed primary and relevant documents to show the purchase and holding of shares for the statutory period, the dematerialisation and sale of shares through the Bombay Stock Exchange in the electronic platform through a recognised broker, and the passage of consideration therefore through banking channels with remittance of securities transaction tax. The assessee had fulfilled the conditions for exemption of long-term capital gains under section 10(38) and discharged her burden thereof. It was not the case of the Assessing Officer that there was any infirmity or deficiency in the documents filed by the assessee. There was no evidence to show the involvement of the assessee or her broker in the conversion of her unaccounted money to bogus long-term capital gains, or anything to suggest that the assessee or her broker had any connection with unscrupulous entry providers. That an enquiry conducted by the Securities and Exchange Board of India into Greencrest Financial Services Ltd. its directors and some allottees, did not lead to imposition of any penalty against any of them nor bring about any allegation or penalty on the assessee or her broker. Order of CIT(A) is affirmed. (AY. 2015-16)

Dy. CIT v. Nisha Shantaram Pokle (2024)113 ITR 327 (Mum)(Trib)

1027 **S. 68 : Cash credits-Long-term capital gains-Penny stock -Accommodation entry -International Conveyors Ltd.-Addition is deleted. [S. 10(38), 45, 115BBE]**

Held, that the assessee had acquired the shares and had been holding them for almost ten years from the date of acquisition and during the year under consideration they were purchased by Team India Managers Ltd. The contention of the Assessing Officer that the movement of the price of shares was abrupt and unrealistic, was not acceptable for the reason that the price per share was Rs. 11. 90 at the time of acquisition and had increased to Rs. 29. 66 over a period of ten years, which was a reasonable increase unlike in most of the penny stock cases where the price of the shares skyrockets manifolds within a short span of time. The assessee had substantiated the financials of ICL which showed that the company was not a bogus entity having dummy directors. Pertinently, the Assessing Officer had merely relied on the fact that in spite of increase in the debt, the sales of the company had not increased proportionately. The assessee, a Securities and Exchange Board of India registered foreign portfolio investor, was engaged in investment in various companies out of which the assessee earned income and this was the only source of income for the assessee. The Assessing Officer had failed to substantiate how the assessee was involved with N, alleged to be an accommodation entry provider who had even otherwise not specifically mentioned the assessee to be the beneficiary of accommodation entry and the scrips of ICL to be a penny stock. Addition is deleted. (AY. 2020-21)

Elara India Opportunities Fund Ltd. v. Dy. CIT (IT (2024)113 ITR 275 (Mum) (Trib)

S. 68: Cash credits-Cash deposits-Demonetisation period -Retail sale of ladies garments -Application of net profit of 8 Per Cent on cash deposit is to be treated as income from business and not to be taxed as unexplained money. [S. 44AB, 44AD, 69A, 115BBE] 1028

The assessee was showing income from business of retail sale of ladies garments, and the cash deposits could be from unaccounted sales from the business which the assessee had not disclosed in the return of income. Accordingly, the source of cash deposit of Rs. 32 lakhs were to be treated out of unaccounted sales made by the assessee. Admittedly, the assessee had been making sales in cash from his small retail outlet for ladies' lower garments that the price of such garments was less than Rs. 2,000 per piece. Therefore, the net profit rate of 8 per cent. on these unaccounted sales of Rs. 32 lakhs which worked out to Rs. 2,56,000 could be applied. Accordingly, the addition was sustained on the basis of application of net profit of 8 per cent. on cash deposits as income from business and profession and not to be taxed under section 69A read with section 115BBE. (AY. 2017-18)

Jayesh Jagat Parekh v. ITO (2024)113 ITR 418/232 TTJ 116/242 DTR 9 (Mum)(Trib)

S. 68: Cash credits-Share application moneys-Premium-Filled all details regarding identity of share allottees, their Permanent Account Number Cards, Passports, acknowledgment of income -Tax Returns, Bank Statements etc.-Addition is deleted. [S. 56(2) (viib)] 1029

Held that the assessee had filed all the details regarding the identity of the share allottees, namely, their permanent account number cards, passports, acknowledgment of Income-tax returns, bank statements from which the share allotment premium had been given. The share allottees were not unknown third parties but had been appointed as directors on the board of the assessee -company. Addition is deleted. (AY. 2011-12)

Kuna Impex P. Ltd. v. Dy. CIT (2024)113 ITR 7 (SN)(Ahd)(Trib)

S. 68: Cash credits-Cash deposit-Demonetisation period-Agricultural income-Living expenses-Addition to the extent of balance sustained -Rate of tax -Provision for taxing cash credits at 60 Per Cent introduced from 15-12-2016 is not applicable for earlier period. [S. 115BBEE] 1030

Held that the Commissioner (Appeals) had not considered the opening cash balance as on January 1, 2016. Considering the withdrawal for living expenses, addition to the extent of balance sustained. Tribunal also held that Provision for taxing cash credits at 60 Per Cent introduced from 15-12-2016 is not applicable for earlier period. (AY. 2017-18)

Nilaben Aravindbhai Lad v. ITO (2024)113 ITR 17 (SN)(Surat) (Trib)

S. 68: Cash credits-Sales from branch-Books of account accepted-Cash sales cannot be assessed as cash credits. [S. 145] 1031

Held that the assessee maintained the complete set of books of account including cash book, ledger, stock register, purchase and sales vouchers. The books of account of the assessee were audited by a chartered accountant. Sales had been made from Himachal Pradesh and complete details of sales with names and addresses, value added tax details with amount and other details of bills were uploaded on the website of that State

Government Department and were accompanied by the trade invoice and were verified at the toll barrier. Keeping in view all this, the sale of goods and their movement from Himachal Pradesh to village Asgarpur, Yamuna Nagar could not be denied. Further, the assessee's books of account had been accepted by the Assessing Officer. Addition is deleted. (AY. 2015-16)
Radiant Cement Co. P. Ltd. v. ITO (2024)113 ITR 28 (SN)(Chd.)(Trib)

1032 **S. 68 : Cash credits-Cash deposit-Demonetisation period-Business of retail trading in medicine-Books of account not rejected -Addition is deleted. [S. 145]**
Held that the Assessing Officer ought to have analysed the purchases also and whether such a profit had resulted to the assessee, which could give rise to unexplained cash to the assessee. In such a situation, why the books of account should have not been rejected. The profit ratio from sales and purchases which could not be of that magnitude, had not been examined. The addition is deleted. (AY. 2017-18)
Subhojit Paul v. ACIT (2024) 113 ITR 3 (SN)(Kol)(Trib)

1033 **S. 68: Cash credits-Shares-Long term capital gains-Offline purchase-Penny stock-Accommodation entries-Opportunity of cross examination is not given -Addition is deleted. [S. 10(38), 45]**
Assessing Officer disallowed assessee's LTCG claim on sale of shares, alleging bogus transactions due to offline share purchase, sharp price rise, and third-party admissions about accommodation entries. CIT(A) up held the order of the AO. On appeal the Tribunal held that no concrete evidence was presented to link assessee to price rigging or bogus transactions and moreover, share purchase was legitimately, done through banking channels, and duly dematerialized and AO's acceptance of genuineness of purchase contradicted claim of a bogus sale. Addition was made by Assessing Officer based on statements/information received from 3rd party, but no opportunity was afforded by revenue for cross-examination which was against principles of natural justice. Offline purchase of share is not prohibited under statute and sharp rise in price of scrip cannot be a sole criterion for reaching to conclusion that price was rigged up to generate long-term capital gain which was exempted under section 10(38). Therefore, capital gain earned by assessee could not be held bogus merely based on some report finding unearthed in case of third party/parties unless cogent material was brought against particular assessee on record. Addition is deleted. (AY. 2011-12)
Jayantilal Bhagwanchand v. ITO (2024) 209 ITD 23 (Bang) (Trib.)

1034 **S. 68: Cash credits-Cash deposits-Demonetisation -Cash sales explained -Basis of cash sales made in earlier financial year cannot be adopted as a parameter for accepting cash sales made during year.**
Held that all requisite documents produced to prove cash deposits in bank account. No abnormality in trend of total cash deposits in immediately preceding year, during year and in succeeding years. Furnished complete books of account including cash book, ledger, stock registers. Sales are subjected to value added tax and suffered sales tax. Goods purchased and sold are reflected as goods inward and goods outward in stock register with quantity and value. No allegation that assessee had received cash

in Demonetised currency during demonetisation period. Entire cash deposits explained. Addition is deleted on the ground that no reason to restrict cash sales to figure reported for corresponding period in earlier year. (AY. 2017-18)
Diwan Saheb Fashions P. Ltd. v. ACIT (2024)112 ITR 12 (SN)(Delhi)(Trib)

S. 68: Cash credits-Cash deposited in the Bank-Demonetization-Merely because assessee had deposited said sourced income in form of SBNs during demonetization, same could not be considered as unexplained cash credits. 1035
Assessee is a medical practitioner. The assessee had deposited substantial amount of cash in bank which was in form of specified bank notes (SBN) during demonetization. The Assessing Officer considered deposits as unexplained income of assessee and made additions under section 68. CIT(A) affirmed the addition. On appeal, the Tribunal held that once source from regular books was considered as explained and assessee had merely deposited that sourced income in SBN, that income could not be considered as unexplained. Addition is deleted. (AY. 2017-18)
Shobha Tomar v. DCIT (2024) 208 ITD 70/ 231 TTJ 44 (Jaipur) (Trib.)

S. 68: Cash credits-long-term capital gain-Sale of shares -Penny stock -Accommodation entries -Information from investigation Wing-Purchase in physical form -Decartelized -Purchase was made through Banking channels -Deletion of addition by CIT(A) is affirmed. [S. 10(38), 45] 1036
Assessing Officer reopened assessment on ground that long-term capital gain declared by assessee was bogus in nature on basis of report of Investigation Wing that person named Giriraj Kishore Agarwal has provided bogus entries in respect of sale of shares of Moryo Industries Ltd which was purchased in physical form, got it transferred in his name and later dematerialised. The AO made addition under S. 68 of the Act. On appeal the CIT(A) deleted the addition. On appeal the Tribunal held that payment for purchase of shares was made through banking channels and assessee had furnished copy of demat statement, which showed entry and exit of shares. Assessing Officer had not found fault with any of documents furnished by assessee evidencing purchase and sale of shares and had also not carried out any independent enquiry with regard to transactions carried on by assessee. On facts, order of the CIT(A) is affirmed. (AY. 2014-15)
ITO v. Prakashmal Malraj Jain. (2024) 208 ITD 403 (Mum.) (Trib.)

S. 68: Cash credits-Long-term capital gains-Accommodation entries-Penny stock -Purchase of shares of LDPL and MARL in off-market transactions-Inordinate delay in dematerialization of those shares-Transaction is not genuine-Addition is justified. [S. 10(38), 45] 1037
Assessee had claimed long-term capital gain derived on sale of shares of LDPL and MARL as exempt under section 10(38). Assessing Officer held that both these companies were penny stock companies which were utilized to arrange accommodation entries to interested beneficiaries and price of share of LDPL and MARL were put on artificial rise and fall in a pre-arranged manner. Shares were purchased in cash in off-market transactions and were kept in pool account of broker though assessee was maintaining its own demat account. Considering these factors and circumstantial evidences,

Assessing Officer concluded that intention of assessee was to obtain accommodation entries and treating amount claimed as LTCG as unexplained made an addition under section 68. CIT(A) affirmed the order of the AO. On appeal the Tribunal held that neither assessee nor broker explained reason for carrying out transactions in off-market manner which was ordinarily not permissible and subject to certain legal constraints under Security Contract (Regulation) Act, 1956. Further, reason for payment for purchase of these shares in cash had also not been explained. It was also found that shares purchased in off-market were not dematerialised immediately after purchase but were dematerialized only a few days prior to sale which was strong evidence of orchestration of entire event of purchase of shares. SEBI had also suspended trading of shares of LDPL and MARL pursuant to manipulation in price movement in price of these securities as noticed by BSE. Surrounding circumstances of transactions established that transactions entered into by assessee were not genuine and, therefore, addition made by Assessing Officer is affirmed. (AY. 2015-16)

Shailesh K. Patel HUF v. ITO (2024) 208 ITD 539/ 231 TTJ 929/243 DTR 201 (Ahd) (Trib.)

1038 **S. 68: Cash credits-Bogus donations-Cash deposited in banks-Addition is justified. [S. 35AC, 35AC (ii)]**

Assessee has deposited cash in bank account. The Assessee explained that said cash was generated on account of bogus donations made by it to various trusts under section 35AC and 35AC (ii) and same was received back from said trusts against cheques issued for donation. Assessing Officer made addition under section 68 on account of said cash deposits holding same as unexplained cash credit. CIT(A) up held the order of the AO. On appeal the Tribunal held that the assessee failed to provide sufficient evidence to substantiate its claim that said cash was received back from various trusts in lieu of bogus donations. Order of AO is affirmed. (AY. 2017-18)

Vaibhav Pankaj Shah v. ACIT (2024) 208 ITD 718/231 TTJ 869 / 241 DTR 25 (Mum) (Trib.)

1039 **S. 68: Cash credits-Penny stock-Long term capital gains-Accommodation entries -DEMAT-Sale of shares of PS Infrastructure and Services Limited-Addition is deleted -Exemption is allowed. [S. 10(38), 45]**

The assessee earned long-term capital gain from sale of shares of PS IT and claimed same as exempt under section 10(38). Assessing Officer held that there was unusual rise in price of shares sold by assessee which had been investigated by Investigation Wing to establish that cash had been routed from various accounts to provide accommodation to assessee and that assessee had failed to discharge his burden to prove unusual rise and fall of share prices. Assessing Officer made addition under section 68 towards entire sale consideration received by assessee on transaction of sale of shares in said scrip. CIT(A) up held the order of the AO. On appeal the Tribunal held that the assessee had discharged his burden by submitting relevant documents and established nature and source of credit representing sale proceeds of shares of PS Infrastructure and Services Limited (PS IT). There was nothing on record from market regulator SEBI for relevant period which established 'tainted' status of scrip involved in sale of shares by assessee so as to hold share sale transactions as bogus/accommodation entry as alleged by

Assessing Officer. Addition is deleted. *PCIT v. Swati Bajaj (2022) 288 Taxman 403/446 ITR 56 (Cal)(HC)* is distinguished. (AY. 2015-16)
Vikram N. Chandan v. ITO (2024) 208 ITD 723 (Mum) (Trib.)

S. 68: Cash credits-Accommodation entries-Share capital, share premium and unsecured loan-Earning commission income a 20 Paise Per Rs. 100-Credit and debit entries in the bank account -Addition is deleted. 1040

Held that the money received by the assessee was immediately passed on to other intermediaries or final beneficiaries so that the assessee could only be taxed in respect of the commission received by it for providing the accommodation entries. Accordingly, the order of the Commissioner (Appeals) was incorrect and, therefore, to be set aside with the direction to the Assessing Officer to delete the addition and assess the commission income at 20 paise per Rs. 100. Relied on *ITO v. Angel Cement P. Ltd. (2021) 88 ITR 616 (Delhi)(Trib) Prem Castings P. Ltd. v. CIT (A)(2018) 11 ITR-OL 216 | [2017 88 taxmann.com 189 (All)(HC)* (AY. 2011-12 to 2014-15)
Bhavesh Commotrade P. Ltd. v. Dy. CIT (2024) 110 ITR 180 /231 TTJ 641 (Ranchi)(Trib)
ACIT v. Suresh Kumar Agarwal (2024) 110 ITR 180/ 231 TTJ 641 (Ranchi)(Trib)

S. 68: Cash credits-Unexplained investments-Long-term Capital gains-Penny stock-Kappac Pharma-Suspected scrip -Scrip discredited by investigation report and Stock Exchange Boards-No material to contrary brought on record-Addition made on presumptions and human probabilities -Addition is deleted-Allowed exemption. [S. 10(38) 45, 69C] 1041

Allowing the appeal the Tribunal held that the assessee was not a regular investor and had specifically made the investment in Kappac Pharma. It was on record that the financials of Kappac Pharma were not commensurate with its purchase and sale price in the market. The assessee had purchased the shares from the open market, dematerialised the scrips and sold them in the stock exchange. There was no discrepancy in the documents filed by the assessee claiming the deduction under section 10(38). Even though all the characteristics of a penny stock existed, the Revenue had not brought on record any material to link the assessee with any dubious transactions relating to entry, price rigging or exit providers. Even in the report of the Securities and Exchange Board of India, there was no mention or reference to the involvement of the assessee. The assessee was a beneficiary in the transactions merely as an unsuspecting investor, who had sought quick profit. The Assessing Officer applied presumptions and human probabilities to make the addition without having any material against the assessee. Addition affirmed by the CIT(A) is deleted. (AY. 2014-15)
Farzad Sheriar Jehani v. ITO (2024) 110 ITR 298 (Mum)(Trib)

S. 68: Cash credits-Unsecured loans-Filed copies of income-tax return acknowledgments, master-data of lenders, audited financial statements, memorandum and articles of association, copies of bank statements, loan confirmations and ledgers showing receipt and refund of loans with tax deducted at source -Burden discharged -Addition is deleted. [S. 133(6)] 1042

Held that where the assessee had filed all the evidence to establish the identity and creditworthiness of the lenders and to prove the genuineness of the transactions, and

the Assessing Officer had not carried out any further verification, the addition could not be made in the hands of the assessee. The Assessing Officer must examine the issue in the cases of creditors and make the addition in their hands and not in the hands of the assessee. The assessee had duly discharged its onus by filing evidence before the Assessing Officer. The burden shifted on the Assessing Officer to enquire further into the matter by filing evidence, which he failed to do. The Assessing Officer had acted on the basis of statements of three persons, which lacked evidentiary value in the absence of any substantive and corroborative evidence being brought on record. Addition is deleted. (AY. 2013-14)
IRIS Clothings Ltd. v. Dy. CIT (2024) 110 ITR 266 (Kol)(Trib)

1043 **S. 68: Cash credits-Unexplained money-Withdrawals in cash and utilisation towards deposits-No defect in cash flow statement–Addition is deleted. [S. 69]**
Held that when any amount was paid and later on withdrawn from the bank, such cash would be available for recycling and rotation unless established as invested elsewhere by the Revenue. Hence, the onus was upon the Assessing Officer to prove. Unless the cash withdrawals had been spent or utilised by the assessee elsewhere and the cash availability was not disproved or rebutted in any manner, the Assessing Officer was bound to accept the availability of such cash for onward use towards cash deposits in the bank account or investment as claimed. Pertinently, the Commissioner (Appeals) observed that no specific finding was recorded by the Assessing Officer regarding the utilisation of cash withdrawals by the assessee in some other investment or expenditure. Accordingly, the addition is deleted. (AY. 2008-09)
Rakesh Sharma v. ITO (2024) 110 ITR 368(SMC) (Jaipur)(Trib)

1044 **S. 68: Cash credits-Unexplained expenditure-Share application money-Information from Investigation wing-Accommodation entries-Transactions through banking channels and companies having sufficient financial reserves to provide credits-Burden discharged. [S. 69C, 131, 133(6)]**
Allowing the appeal the Tribunal held that the Assessing Officer did not offer any examination of these documents and did not mention even a single adverse point in the financials of these companies. His whole exercise was based upon his claim that section 133(6) notice was returned unserved. It was not at all the case that these companies did not have permanent account numbers or that they did not file Income-tax returns. The Commissioner (Appeals) had mentioned that the Assessing Officer had issued summons under section 131 of the Act to the directors of the company but no such mention was there in the order of the Assessing Officer. From the examination of the financials, balance-sheet and bank statement, it was seen that the transactions were through banking channels and these companies had sufficient financial reserves to provide the credits/loans to the assessee. In these circumstances, when all the details were provided and no adverse feature was noted therein, the assessee had discharged the onus cast upon it. The authorities had based the adverse orders only by making general observation and repeating that the assessee did not produce the directors of these companies. The orders of authorities were to be set aside. Since the addition

under section 68 of the Act was to be deleted, the addition for commission did not survive. (AY. 2008-09)
Vedic Foundation P. Ltd. v. ITO (2024)110 ITR 17 (SN)(Delhi)(Trib)

S. 68: Cash credits-Share application money-Substantial turnover-Established genuineness of transaction-Addition is deleted. [S. 56(2)(viib), 131] 1045
Assessing Officer held that one investor, Axis Propbuild Pvt Ltd. made investments from funds received from Toplink Projects Pvt. Ltd. and return income of said shareholder company was not sufficient. He treated share application receipts from Axis Propbuild Pvt. Ltd. as unexplained credit under section 68 and made additional commissioner (Appeals) deleted the addition. On appeal, the Tribunal held that as per financial statements of Toplink Projects Pvt Ltd, who had made entire investment in Axis Propbuild Pvt. Ltd. it was evident that there was a substantial amount of gross total income. In view of substantial turnover and net worth of Toplink Projects Pvt Ltd which was also an associated company of Axis Propbuild Pvt Ltd only finding of Assessing Officer that investor's share capital and reserves were not changed from preceding year and there was insufficient income, could not be sole reason to characterize said transaction as bogus. Since, the assessee had duly established creditworthiness of investor and genuineness of transaction, addition made by Assessing Officer is merely on basis of a preconceived notion and was, arbitrary and unsustainable. Order of CIT(A) deleting the addition is affirmed. (AY. 2017-18)
DCIT v. Shree Rupanandham Steel (P.) Ltd. (2024) 207 ITD 115 (Raipur) (Trib.)

S. 68: Cash credits -Protective basis -Substantive addition is confirmed-Addition is deleted. [S. 45,143(3), Vivad se Vishwas Scheme] 1046
Held that substantive additions had been made by department in case of 4 loan creditors, out of which, 3 loan creditors had accepted additions and had availed Vivad se Vishwas Scheme and paid due taxes, therefore, source of loan in their hands stood explained. There was no allegation that source of loan in case of 4th creditor was out of any unexplained income of assessee and assessment in case of other 3 persons already stood barred by limitation and, no substantive additions had been made in their hands. Protective addition is deleted. (AY. 2014-15)
Dev Darshan Designs (P.) Ltd. v. ITO (2024) 207 ITD 260 (Kol) (Trib.)

S. 68: Cash credits-Foreign portfolio investor-Sale of shares-Holding more than 10 years as investment-Addition is deleted-DTAA-India-Mauritius. [S. 9(1)(i), 115BBE, Art. 22] 1047
Assessee is a foreign portfolio investor which had been investing in India since 2006 onwards. Assessee had sold certain shares of an Indian company and claimed same to be exempt under India-Mauritius DTAA. Assessing Officer held that share price of said scrip had been manipulated for purpose of availing bogus profits and losses. He thus, held that sale of shares was an accommodation entry for purpose of availing bogus long term gain and, accordingly, made addition of sale consideration to be an unexplained source of investment under section 68. Since, assessee had been holding said shares for almost 10 years and price of said shares had increased over a period of 10 years,

it could be said that transaction made by assessee in shares was a genuine transaction and, therefore, addition made under section 68 is deleted. (AY. 2020-21)
Elara India Opportunities Fund Ltd. v. DCIT (IT) (2024) 113 ITR 275 / 207 ITD 330 (Mum) (Trib.)

1048 **S. 68: Cash credits-Sale of shares-Penny stock-PMC Fin Corp script -Long-term capital gains-Demat account -Sale through recognized stock exchange -STT paid -Purchasing shares from the stock exchange platform is not unlawful and continuous buying of shares at increased price does not contravene any provisions of SEBI laws -Denial of exemption is not valid. [S. 10(38), 45]**
Assessee had sold shares and claimed exemption under section 10(38) of the Act. Assessing Officer made an addition of same as unexplained cash credit under section 68. Order of AO is up held by the CIT(A). On appeal the Tribunal held that addition cannot be made solely on premise of alleged price rigging in PMC Fin Corp script. The shares were sold through recognized stock exchange through Demat and STT was also paid. The Tribunal held that purchasing shares from the stock exchange platform is not unlawful and continuous buying of shares at increased price does not contravene any provisions of SEBI laws. Denial of exemption is not justified. Followed, *PCIT v. Dipansu Mohapatra (2024) 298 Taxman 194/ 463 ITR 681 (SC)* (AY. 2013-14)
Rama Mittal v. ITO, NFAC (2024) 207 ITD 336/116 ITR 383 (Amritsar) (Trib.)

1049 **S. 68: Cash credits-Additional evidence-Mismatch in receipts between profit and loss account and Form 26AS -Matter remanded back to Assessing Officer for de novo adjudication. [Form No 26AS, ITAT R. 29]**
Assessing Officer held, that there was some difference in gross receipts reflected in Form 26AS and that declared by assessee in return. The AO made additions as cash credits. CIT(A), affirmed the order of the AO. On appeal the Tribunal admitted the additional evidence and remanded the matter to the file of AO for de novo adjudication. (AY. 2014-15)
GIIR Communications India (P.) Ltd. v. DCIT (2024) 207 ITD 697 (Delhi) (Trib.)

1050 **S. 68: Cash credits-Share capital-Share premium-Identity, genuineness of transaction and creditworthiness of investor is established-Deletion of addition by CIT(A) is affirmed.**
The assessee had received certain amount on account of share capital including share premium. Assessing Officer made an addition under section 68 treating aforesaid share capital and premium as unexplained cash credit. CIT(A) deleted the addition on the ground that the assessee had established the identity, genuineness of transaction and creditworthiness of investor. On appeal the Tribunal affirmed the order of the CIT(A). AY. 2012-13)
ACIT v. Doshion Veolia Water Solution (P.) Ltd. (2024) 207 ITD 801 (Mum) (Trib.)

1051 **S. 68: Cash credits-Share capital-Need not prove source of the source-Order of CIT(A) deleting the addition is affirmed. [S. 131, 133(6)]**
The assessee is engaged in the civil construction and renting of immovable properties. Assessing Officer made addition for the share capital allotted treating the same as

unexplained cash credit in terms of u/s 68 of the Act. The assessee has already discharged its onus u/s 68 of the Act by producing required documents before the AO but the AO neither issued any notice u/s 133(6) nor summon u/s 131 of the Act for verification of the parties or documents filed in respect of those parties. The CIT(A) duly verified the documents and concluded that those subscribers were having sufficient creditworthiness to invest in the share capital of the assessee company. The Revenue has failed to rebut the finding of ld CIT(A) before ITAT. The grounds raised by the Revenue are accordingly dismissed. ITA No. 2719/M/2023, dt. 13/05/2024. (AY. 2012-13)
DCIT v. Jaymala Infrastructure P. Ltd. (Mum) (Trib) (UR)

S. 68: Cash credits-Trading in gold and silver-Cash deposit to Bank-Demonetisation -Audited books of account supported by sales bill and stock details-Books of account not rejected-Unsecured loan -Filed ledger confirmation and Permanent Account Number-Addition is deleted. [S. 131(1), 133(6)] 1052

Held that the Assessee had shown cash receipts from the sale of gold and gold ornaments which are duly recorded in the audited books of account and supported by sales bills and stock details. The Assessing Officer has not pointed out any defect in the books of account. Accordingly, the addition is deleted. As regards the unsecured loan the Tribunal held that the assessee had discharged the onus cast upon him by furnishing ledger confirmation from the creditors, their permanent account numbers, their returns, and their bank statements. The identity of the creditors was duly established. Likewise, the genuineness of the transactions also got established by the fact that the transactions were carried out through banking channels which were duly reflected in their respective bank statements and duly recorded in the books of account as loan which was also confirmed by the creditors. The authorities did not bring any material on record suggesting otherwise. The Assessing Officer did not point out any infirmity in the primary documents nor conducted direct investigation from the creditors by issuing notice under section 133(6) / 131(1) of the Act. In addition to that the assessee had provided permanent account number details as well as copy of returns of the creditors based on which the Revenue authorities should have access to financial details of the creditors. The assessee also furnished copy of bank statements of the creditors showing the availability of funds before lending money to the assessee. The burden shifted upon the Assessing Officer to bring material on record rejecting the explanation and evidence submitted by the assessee as not satisfactory. Addition is deleted. (AY. 2017-18)
Abhishek Prakashchand Chhajed v. ITO (2024)109 ITR 349 (Ahd)(Trib)

S. 68: Cash credits-Deposit of cash in bank-Primary ownership is discharged -Addition is deleted. 1053

Allowing the appeal the Tribunal held that the assessee had discharged his primary onus of proving the plausible explanation of the matter and the burden shifted to the Department to prove whether or not the assessee's information was correct. Considering the evidence placed on record and the registered copy of the power of attorney the assessee was not the real owner of the cash deposit of Rs. 27,00,000 in the bank account. Addition is deleted. (AY. 2013-14)
Jagdish Prasad Sharma v. ITO (2024)109 ITR 75 (SN)(Jaipur)(Trib)

1054 **S. 68: Cash credits-Share capital and share premium-Furnished copy of certificate of incorporation along with MOA and AOA, auditor's report, balance sheet, trading and profit and loss account-Addition is deleted. [S. 56(2) (viib), R. 11UA]**

Assessing Officer made addition to income of assessee under section 68 on account of unexplained share premium and share capital. On appeal, Commissioner (Appeals) confirmed said order. On appeal, the Tribunal held that the assessee has furnished copy of certificate of incorporation along with MOA and AOA, auditor's report, balance sheet, trading and profit and loss account as on 31-3-2016 along with notes of financial statement, copy of ITR, share application form, confirmation of account, bank account statement and valuation report as per rule 11UA (2). Accordingly, the addition confirmed by the CIT(A) is deleted. (AY. 2016-17)

Shanta Blankets (P.) Ltd. v. ITO (2024) 206 ITD 715 (Delhi) (Trib.)

1055 **S. 68: Cash credits-Share capital-Issue of shares at premium -Identity and creditworthiness of share subscribers are proved-Non-compliance to summons to director -Addition is not justified. [S. 131]**

Assessee-company had issued certain shares at premium. It was asked to explain source of alleged sum. Complete details were filed by assessee. Thereafter, Assessing Officer also issued summons under section 131 to which he noted that directors of assessee-company did not appear personally in compliance to summons issued. Accordingly, he made an addition as unexplained cash credit. CIT(A) deleted the addition. On appeal, the Tribunal held that since assessee had filed all evidences proving identity and creditworthiness of share subscribers, mere non-compliance to summons issued under section 131 could not be a ground for making addition under section 68. Order of CIT(A) is affirmed. (AY. 2012-13)

ACIT v. Gold Rush Sales and Service Ltd. (2024) 204 ITD 421 (Kol) (Trib.)

1056 **S. 68: Cash credits-Cash deposited-Demonetisation -Explained the source -Explanation cannot be rejected on the ground of afterthought -Addition is deleted.**

Assessee deposited high demonetisation notes. Gave explanation that source being cash in hand and repayment by sundry debtors in cash. AO refused explanation on ground that debtors were unverifiable. On appeal the CIT(A) affirmed the order of the Assessing Officer. On appeal the Tribunal held that, the assessee is doing moneylending in cash since several years and financial statements support this fact. Interest received in cash from debtors has been consistently shown and accepted in earlier years as well as this year. The financial statements of earlier two years clearly demonstrate availability of cash balances arising from interest and sundry debtors. Thus, this explanation cannot be treated as an afterthought. Tribunal also held that when the assessee has filed overwhelming evidence demonstrating availability of cash in hand and its source, the same cannot be rejected on grounds of afterthought. Addition is deleted. (ITA No 733 / Chny /2024 dt. 12-8-2024) (AY. 2017-18)

Gouthamchand Jain v. ITO (Chennai)(Trib) www.itatonline.org

S. 68: Cash credits-Assessing Officer has not made any inquiry of his own either issuing notice under section 133(6) or 131 of the Act-Tax deducted at source -Filed confirmation-Burden is discharged -Addition is deleted. [S. 131, 133(6)] 1057

When the assessee has furnished all details in the comprehensive sheet mentioned; the name of the lender, PAN, amount of loan, repayment of loans, interest paid and Tax Deducted at Source, the closing balance, duly signed confirmation of ITR, relevant bank statement of the depositors was furnished, the assessee has already repaid the entire loan amount of a few lenders. The Assessing Officer has not made any inquiry of his own either issuing notice under section 133(6) or 131 of the Act. The assessee has discharged its onus and thus addition as an unsecured loan under section 68 of the Act is held to be bad in law, especially in the light of the facts that the Assessing Officer failed to give any reason for justification of addition except the presumption and without bringing any adverse evidence on record. Followed, *CIT v. Ranchod Jivabhai Nakhava (2012) 21 taxmann.com 159 (Guj)(HC).* (AY. 2018-19)

Rajgreen Infralink LLP v. Dy. CIT [2024] 109 ITR 52 (Surat)(Trib)

S. 68: Cash credits-Estimation of income-Ex-parte order by CIT(A) and Assessing Officer-Matter was remanded to Assessing officer for de novo assessment. [S. 148, 251] 1058

AO issued notice under section 148. Assessee did not respond to various notices issued ITBA. The notice issued through speed post remained unserved. Before CIT(A) also the assessee had not attended. CIT(A) partly confirmed the addition. On appeal the Tribunal held that the assessee should be given one final opportunity to present the case on merits. Accordingly, directed the assessee to furnish the required information as may be called for without seeking any adjournment and cooperate with the proceedings. The matter is remanded to the Assessing Officer for de novo assessment. (AY. 2012-13)

Alpha Heavy Engineering (P.) Ltd. v. ITO [2024] 205 ITD 106 (Mum) (Trib)

S. 68: Cash credits-Discharged the burden by filing confirmation and other details -The AO cannot deem creditors as bogus solely due to lack of response, & without presenting evidence to demonstrate that the payables were unnecessary to settle -Order of CIT(A) deleting the addition is confirmed. [S. 133(6)] 1059

The assessee was engaged in the business of trading of imported goods. The Assessing Officer (AO) made an addition to the assessee's income under section 68 of the Income Tax Act, 1961, on account of unexplained sundry creditors. The AO based his addition on the grounds that the assessee had not furnished the confirmation letters from the creditors, that some of the creditors had not responded to the notices issued under section 133(6) of the Act, and that one of the creditors had not supplied any goods to the assessee and the payment to it was made in subsequent years.

The Tribunal held that the CIT(A) had correctly appreciated the facts and the evidence regarding the payment and that the AO had not brought any material on record to prove that the creditor in question was not genuine. The Tribunal further held that the absence of reply from the Creditors did not entitle the AO to treat the Creditors as bogus without bringing any evidence on record to prove that the payables were not indeed required to be paid. The Tribunal also held that the CIT(A) had made a reasonable and fair enquiry into the genuineness of the additional information submitted

by the assessee, and that the AO had not rebutted the same. The Tribunal finally held, that no addition could be made on the outstanding balance pertaining to a creditor, as the assessee had discharged its onus of proving the identity, creditworthiness and genuineness of the transaction, and that the balance Creditors were also genuine and verifiable. (AY. 2016-17)
ACIT v. Real Impact P. Ltd. [2024] 109 ITR 29 (SN)(Delhi)(Trib)

1060 **S. 68: Cash credits-Proved identity creditworthiness and genuineness -Addition is deleted. [S. 148]**
Tribunal held that the assessee had discharged its burden of proving the identity of loan creditor having permanent account number and filed the return of income as well. Further the creditworthiness of the transaction was proved since they had been through banking channel and sufficient funds were available with the loan creditors to prove genuineness of the transaction. Assessee Company was carrying out regular business activity and loan was obtained at commercial rate of interest which was repaid at a later date in the subsequent year. Tax was deducted at source on interest paid on loans. Hence, addition of Rs. 25,00,000/-made under Section 68 of the Act was deleted. Relied:
Pr. CIT v. Sree leathers [2022] 448 ITR 332 (Cal.) (HC) (AY. 2013-14)
Poddar Realtors v. ITO [2024] 109 ITR 605 (Kol) (Trib)

1061 **S. 68: Cash credits-Long-term capital gains-Penny stock-Information from Investigation wing from Kolkata-Estimation of commission -Not subjected to any enquiry by SEBI -Statement of the assessee -Sold through DEMAT account-Addition as cash credits and estimation of commission is deleted. [S. 10(38), 45, 69C, 131]**
The assessee has sold the shares of, Radford Global Ltd. (Earlier known as PS Global Ltd., Surbhi Chemicals & Investment Ltd. and Pyramid Trading & Finance Ltd. (Now known as Mishka Finance & Trading Ltd) and shown as exempt under section 10(38) of the Act. On the basis of the report of the Investigation Wing of the Kolkata, the Assessing officer treated the sale consideration as cash credits and also made estimated disallowance of alleged commission under section 69C of the Act. On appeal the CIT(A) affirmed the addition. On appeal the Tribunal deleted the addition on the ground that the assessee was not subjected to any enquiry by SEBI, the shares were sold through DEMAT account, payments were received by account payee cheques, in response to summons under section 131, the assessee appeared before the Assessing Officer and produced the all relevant documents. The Tribunal following the decision of the jurisdictional High Court, the addition is deleted. Referred, *PCIT v. Ziauddin A Siddique (ITA No. 2012 of 2017 dated 4th March, 2022 (Bom)(HC), PCIT v. Renu Aggarwal (Smt.) (2023)456 ITR 249) (SC), PCIT v. Indravadan Jain HUF (ITA No. 454 of 2018) (Bom) ((HC), CIT v Shyam R. Pawar (2015)54 taxmann.com 108/ 229 Taxman 256) (Bom), (HC) CIT v. Jamnadevi Agrawal (Smt.) (2010) 328 ITR 656/ (. 2012) 20 taxmann.com 529 (Bom) (HC) PCIT v. Krishna Devi (Smt.) (2021)126 Taxmann.com 80 / 279 Taxman 148 / 431 ITR 361 (Delhi)(HC).* (ITA No. 3256 /Mum/2022 dt. 20-2-2024) (AY. 2014-15)
Chirag Tejpraksh Dangi v. ITO (Mum)(Trib) www.itatonline.org

S. 68: Cash credits-Sale of shares-Penny stock-Denial of exemption is not justified -Addition as cash credits is deleted -Estimated commission-Addition is deleted [S. 10(38), 45, 69C] 1062

The assessee purchased 2 lakh shares of M/s Paridhi Properties Ltd. (PPL) at cost of Rs. 10 per share amounting to Rs. 20 lakhs, in March 2014. Later on, M/s Paridhi Properties Ltd merged with Luminaire Technologies Ltd which allotted 20 lakhs equity shares at face value of Rs. 1/-. Out of the 20,00,000 shares, 47,2000 shares were sold during March 2013, within a gap of 10-12 days amounting to Rs. 2,50,24,074/-. Considering holding period, the assessee claimed long term capital gain exemption U/s 10(38) of the Act. Documents like bank transaction, share transaction copies, paid through STT, ledger and demat account were duly submitted before the revenue authorities. Based on the report of the investigation wing the Assessing Officer reopened the assessment and the sale consideration is assessed as cash credits and also addition is made under section 69C as alleged payment of the Commission. On appeal the CIT(A) affirmed the order of the Assessing Officer. On appeal the Tribunal allowed the claim of the assessee under section 10(38) of the Act. Judgement of *PCIT v. Swati Bajaj (2022) 139 taxmann.com 352 /288 Taxman 403 / 446 ITR 56 (Cal.)(HC)* distinguished. Orders of Jurisdictional High Court in *CIT v. Shyam R Pawar [2015] 54 taxmann.com 108/229 Taxman 256 (Bom) (HC) CIT v. Jamnadevi Agrawal [2010] 328 ITR 656 (Bom)(HC), CIT v. Mukesh Ratilal Marolia (Bom.) (HC) (ITA No 456 of 2007 dated 07/09/2021), PCIT v. Ziauddin A. Siddiquie (ITA No. 2012 of 2017 Date 04/03/2012 (BOM.) (HC) (ITA 4271/Mum/2023 dt. 30-5-2024)* (AY. 2013-14)
Shaily Prince Goyal v. ITO (Mum)(Trib) www.itatonline.org.

S. 68: Cash credits-Unexplained cash deposits-Demonetisation-No defects in the books of account-Stock register-Cash sales duly offered to tax have been accepted -Bringing the realization of sale proceeds in cash to tax will amount to double taxation and the same is clearly unsustainable in law. [S. 145] 1063

The ITAT held that the source of cash deposits had been explained by the assessee as out of its cash sales so undertaken and it was also been explained that such cash sales are subject to VAT where VAT has been collected and deposited with the government treasury. Further no defect was pointed out by the AO in terms of availability of stock or in any of the documentation so submitted by the assessee or in the books of accounts. The ITAT therefore, accepted the contention of the AR that where the cash sales duly offered to tax have been accepted, bringing the realization of sale proceeds in cash to tax will amount to double taxation and the same is clearly unsustainable in law and cannot be upheld. Accordingly, the addition made u/s 68 was deleted. (AY. 2017-18)
Fashion Zone v. Jt. CIT (2024) 111 ITR 138 (Chd)(Trib.)

S. 68: Cash credits-Customer advances-Accepted in earlier years and later years -Addition is deleted. 1064

The assessee claimed that the advances were received from customers for booking vehicles and were genuine trade transactions. The Assessee provided ledger accounts and sale bills to support its claim. That the assessee argued that the advances were adjusted against sales in subsequent years and that the Revenue's approach was inconsistent with previous and subsequent assessments. The Revenue argued that the

assessee failed to provide sufficient evidence to prove the genuineness of the advances. It noted discrepancies in the addresses provided and alleged that the assessee did not produce necessary documents like receipt books and cash books. The Hon'ble Tribunal deleted the addition finding that the assessee had provided sufficient evidence to prove the genuineness of the advances. The Hon'ble Tribunal also noted that similar advances were accepted in previous and subsequent years and that the Revenue's approach was inconsistent. (AY. 2010-11)
Raj Auto Wheels P Ltd v. ACIT, (2024) 111 ITR 199 (Jaipur)(Trib.)

1065 **S. 68: Cash credits-Unexplained loan-Burden of Proof-Assessee submitted primary documents establishing identity and creditworthiness of creditor and genuineness of loan-Addition is deleted.**
Assessee was asked to file details of loans taken during the year. Assessee filed three documents, namely, A/c confirmation, bank pass-book and PAN card, which were undisputably accepted by both AO and CIT(A). The A/c confirmation was duly signed by creditor and contained full address as well as PAN of creditor. Thus, identity of creditor was duly proved. Further, bank pass-book clearly showed that creditor received certain amount through clearing and loan was given to assessee out of it. Therefore, capacity/ creditworthiness of creditor was proved. Further, genuineness of loan was also established by bank pass-book, which clearly reflected that loan was taken through banking channel and there was no involvement or flow of cash. Thus, all the elements of section 68 were satisfied. Hence, assessee discharged primary burden cast upon him and still if AO was not satisfied, he ought to have made enquiry from creditor. However, he had not done any such enquiry and fastened tax liability upon assessee without any basis. Hence, the impugned addition was deleted. (AY 2019-20). [ITA No. 391/IND/2022 dated 18/08/2023]
Naresh Navlani v. DCIT (Indore)(Trib)(UR)

1066 **S. 68: Cash credits-Share capital-Need not prove source of the source-Order of CIT(A) deleting the addition is affirmed. [S. 131, 133(6)]**
The assessee is engaged in the civil construction and renting of immovable properties. Assessing Officer made addition for the share capital allotted treating the same as unexplained cash credit in terms of u/s 68 of the Act. The assessee has already discharged its onus u/s 68 of the Act by way producing required documents before the AO but the AO neither issued any notice u/s 133(6) nor summon u/s 131 of the Act for verification of the parties or documents filed in respect of those parties. The CIT(A) duly verified the documents and concluded that those subscribers were having sufficient creditworthiness to invest in the share capital of the assessee company. The Revenue has failed to rebut the finding of Ld. CIT(A) before ITAT. The grounds raised by the Revenue are accordingly dismissed. (ITA No. 2719/M/2023, dt. 13/05/2024, (AY. 2012-13)
DCIT v. Jaymala Infrastructure P. Ltd (Mum) (Trib) (UR)

S. 68: Cash credits-Share capital-Filed names of lenders, Permanent Account Numbers, addresses and Income-Tax Returns, credit worthiness, bank statement -Order of CIT(A) deleting the addition is affirmed-Unsecured creditors-Replied to notices and filed confirmation-Not appeared before Assessing Officer-Order of CIT(A) deleting the addition is affirmed -Statement recorded during search -Opportunity of cross examination is not given -Opening balance cannot be added. [S. 133(6)] 1067

Held that the assessee had filed the names of all the nine lenders, their respective permanent account numbers, addresses as well as the Income-tax returns of the lenders, which proved that they were filing tax returns before the Department; and the permanent account numbers details and addresses of the corporate entities proved the identity of all the nine lenders. The genuineness of the transactions was revealed from the bank statements highlighting the loan transactions. Order of CIT(A) deleting the addition is affirmed. Held that all the nine parties received the notices issued by the Assessing Officer under section 133(6) of the Act and pursuant thereto, had replied and filed confirmations of the unsecured loan transaction. Merely because the lenders did not appear before the Assessing Officer, that could not be the sole reason for drawing an adverse view against the assessee. Held that statement was recorded behind the assessee's back and no opportunity was given to the assessee hence the addition is not valid. Tribunal also held that opening balance cannot be added as cash credits. Order of CIT(A) deleting the addition is affirmed. (AY. 2009-10)

ITO v. Design Deal Fashions P. Ltd. (2024)111 ITR 22 (SN)(Mum)(Trib)

S. 68: Cash credits-Surrender of income-Business income-Survey-No sum credited in books-Cannot be assessed as income from undisclosed source. [S. 115BBE, 132,133A] 1068

Held that apart from business of manufacture of jewellery, the assessee did not have any other line of business or source of income. Therefore, to treat the unexplained income as derived from a source other than the business activity of the assessee would be assessing the income on surmises and conjectures when the assessee had made a disclosure with reference to the seized documents as other undisclosed income in the profit and loss account. Therefore, the provisions of section 68 read with section 115BBE of the Act were wrongly invoked. Section 68 of the Act can be invoked only where any sum is found credited in the books of account maintained by the assessee in the previous year and the assessee offers no explanation about the source and nature thereof. In the assessee's case there was no sum credited in the books but an income disclosed during the course of search with reference to incriminating material was shown with respect to which the provisions of section 68 could not be invoked. Addition is deleted. (AY. 2017-18)

Jewel India Jewellers v. Dy. CIT (2024)111 ITR 42 (SN)(Kol)(Trib)

S. 68: Cash credits-Accommodation entries-Information from Investigation Wing -Bhanwarlal Jain-Rajendra Jain-Gautam Jain group-No evidence that amount was credited-Addition is deleted. 1069

Held that merely on the basis of information from Investigation wing as regards the accommodation entries from Bhanwarlal Jain, Rajendra Jain & Gautam Jain group, addition cannot be made when there is no evidence to show that the amount was

credited in the books of accounts of assessee. (AY. 2009-10) (ITA No. 2679/ Mum/ 2023 dt. 31-1-2024)
Manish Mehta v. ITO (2024) Chamber's Journal-March p. 112 (Mum)(Trib)

1070 **S. 68: Cash credits-Sale of shares-Comfort Fine cap Ltd.-Penny stock -All documents produced-Capital gain is exempt from tax. [S. 10(38), 45]**
Held that the assesee has produced all documents in respect of sale of shares of Comfort Fine cap Ltd. Hence, the sale consideration cannot be assessed as cash credits. The assessee is entitled to exemption in respect of capital gains. (AY. 2014-15) (ITA No. 883/ Mum/ 2023 dt. 7-2-2024)
Udaykumar Shah v. ITO (2024) Chamber's Journal-March-P. 113 (Mum)(Trib)

1071 **S. 68: Cash credits-Sale of shares-Shreenath Commercial and Finance Ltd.-Penny stock -Capital gain-Denial of exemption is not justified. [S. 10(38), 45]**
Tribunal held that the Revenue has not bought on record any materials linking the assessee in any dubious transactions relating to entry, price rigging or exit providers. Even in the SEBI report, there is no mention or reference to the involvement of the assessee. The denial of exemption is not justified. (AY. 2013-14) (ITA No. 2944/ Mum/ 2023 dt. 20-3-2024)
Abhishek Doshi v. ITO (2024) Chamber's Journal-April-P. 108(Mum)(Trib)

1072 **S. 69: Unexplained investments-Bogus purchases-Red flagged by the Sales Tax Department-Quantity tally-No defects in the books of account-No disallowance warranted without bringing on record any other evidence to prove that the purchases made by assessee were not genuine -Order of Tribunal deleting the addition is affirmed. [S. 68]**
On appeal by the Revenue, the Hon'ble Court held that both the CIT(A) as well as the ITAT have come to a concurrent factual finding that assessee was a 100% export oriented unit and was purchasing goods from various parties. Assessee was getting the goods manufactured from other manufacturers to whom payments had been made through banking channel. Both authorities have accepted the fact that manufacturers were supplying the goods with details of raw-materials consumed and the batch number and the AO had not even doubted the Batch Manufacture Record ("BMR"), Goods Received Note ("GRN"), delivery challans, etc. issued by the trans-porter with regard to supply of goods/supply of raw-materials. The AO had not even pointed out any defect in the tally on the quantity delivered. The AO, had not even made enquiry with the suppliers and the payment of Value Added Tax by assessee has also been ignored. Therefore, the CIT(A) and the ITAT came to a finding that the AO cannot, simply relying upon in-formation received by the Sales Tax Department, without doing any further conclude that the purchases made by assessee were not genuine. (ITXA No. 1198 OF 2018 dt. 03/04/2024) (AY. 2010-11)
PCIT v. SRS Pharmaceuticals Pvt Ltd (Bom.) (HC)(UR)

S. 69: Unexplained investments-Bogus purchases –Purchase from grey market -Trading in gold and diamond jewellery-Sales accepted -Books of account not rejected -Order of Tribunal estimating addition of 13. 05 per cent of gross profit is affirmed -No substantial question of law. [S. 145, 260A] 1073

Assessee-HUF which is engaged in business of trading in gold and diamond jewellery. During year, assessee made purchases from two parties. Assessing Officer disallowed entire purchases on ground that said parties were engaged in business of providing accommodation entries. Commissioner (Appeals) held, that Assessing Officer while making addition of entire purchases had accepted sales. Therefore, Commissioner (Appeals) considering fact that Assessing Officer could not have disallowed entire purchases in absence of any finding on correctness of amount paid/payable to creditors, possibility of purchasing goods from grey market at lower rates and recording same at inflated price in books of account could not be ruled out and, hence, made an addition to 13.05 percent of gross profit. Tribunal upheld order of Commissioner (Appeals). High Court affirmed the order of the Tribunal. No substantial question of law. (AY. 2017-18)

PCIT v. Sunil Mittal HUF (2024) 300 Taxman 288 (Guj.) (HC)

S. 69: Unexplained investments -Search -Purchase of raw materials -Department and had only assumed undisclosed investment being source of purchases recorded for subsequent sales -Order of Tribunal had rightly deleted addition made by Assessing Officer under section 69C-No substantial question of law. [S. 260A] 1074

During search, Excise Department found that assessee was involved in clandestine movement of vitrified tiles and thereby evaded payment of duty. Assessing Officer made addition under section 69C in respect of unaccounted investment in purchase of raw-material and subsequent manufacturing expenditure on unaccounted raw-material for manufacturing boxes of vitrified tiles. Commissioner (Appeals) deleted the addition. Tribunal affirmed the order of the CIT(A). On appeal the Court held that both Tribunal as well as Commissioner (Appeals) having arrived at concurrent finding of fact that the Assessing Officer had not recorded any finding of any undisclosed investment found as a result of search by Excise Department and had only assumed undisclosed investment being source of purchases recorded for subsequent sales, Tribunal had rightly deleted addition made by Assessing Officer under section 69C. No substantial question of law. (AY. 2012-13)

PCIT v. Simpex Granito (P.) Ltd. (2024) 300 Taxman 150 (Guj.) (HC)

S. 69: Unexplained investments-Export of Rice -Search by Enforcement Directorate -Alleged mis-declaration of value of goods exported-Dropping of proceedings by Enforcement Directorate-Deletion of addition by the Tribunal is affirmed. [S. 148, 260A, FERA] 1075

Assessee had exported Rice. Officers of Enforcement Directorate searched premises of assessee and alleged that it had mis-declared value of goods exported by it. On basis of show cause notice issued by Enforcement Directorate, Income tax department initiated proceedings under section 148 alleging that assessee had mis-declared value of goods exported by it. Assessing Officer made additions on basis of record of Enforcement Directorate. CIT(A) allowed the appeal of the assessee. Tribunal affirmed the order of

the CIT(A). On appeal, Tribunal held that since Enforcement Directorate had dropped proceedings against assessee and matter stood settled between assessee and Enforcement Directorate, foundation of proceedings under 1961 Act stood wiped out and, thus, there was no ground to make additions in returned income of assessee. Tribunal also recorded finding to effect that documents resumed by Enforcement Directorate related to sub-sequent assessment years and Income Tax Department could not make additions in returned income of a particular year with respect to which documents did not relate. On appeal the Court held that Tribunal is justified in deleting additions made by the Assessing Officer. No substantial question of law. (AY. 1988-99)
CIT v. Sachdeva & Sons (2024) 300 Taxman 211 (P&H) (HC)

1076 **S. 69: Unexplained investments-Photocopy of an alleged agreement to sell-Addition is not justified-Order of Tribunal deleting the addition is affirmed. [S. 260A]**
Assessee is a co-purchaser of a land. Assessing Officer received information in form of a photocopy of an alleged agreement to sell. Said photo-copy indicated that assessee was a co-purchaser of certain land which was to be purchased for a consideration of Rs. 11 crores and assessee had paid Rs. 2.75 crores as advance for purchase of said land out of which Rs. 1.37 crores were paid in cash. Assessing Officer based on said information issued reopening notice and made addition to income of assessee on account of purchase of said land from undisclosed sources. Tribunal held that entire foundation of addition was based on photocopy of alleged agreement to sell and original copy of said document was not seen hence deleted the addition. On appeal Court held that since there was no other evidence to sup-port veracity of recitals made in aforesaid alleged agreement, addition made to income of assessee was unjustified. Order of Tribunal deleting the addition is affirmed. (AY. 2010-11)
PCIT v. Rashmi Rajiv Mehta (Smt.) (2024) 299 Taxman 82 /(2025) 474 ITR 97 (Delhi)(HC)

1077 **S. 69: Unexplained investments-Search and seizure-Jewellery-Painting-Wrist watches -Considering the income shown by the assessee and family -Tribunal deleted the addition -High Court affirmed the order of the Tribunal. [S. 132, 260A]**
Dismissing the appeal of the Revenue the Court held that the jewellery declared/ disclosed by joint family of assessee as one unit in its wealth tax re-turn was more than jewellery found during search and the assessee had placed before Assessing Officer item-wise reconciliation of articles mentioned in wealth tax return and Assessing Officer was unable to flag any defect in reconciliation statement submitted by assessee. As regards the paintings, the assessee had placed on record valuation report of paintings. Even though two valuers appointed by revenue had estimated worth of paintings differently but revenue had not pointed out any defect in valuation report submitted by expert appointed by assessee. Source of one painting purchased by assessee in 2017 was shown as payment through bank and remaining paintings were claimed by assessee as having been purchased out of drawings. As regards investment in wrist watches were purchased from declared income. Order of Tribunal deleting the addition is affirmed. (AY. 2018-19)
PCIT v. Nirmal Kumar Minda (2024) 297 Taxman 200 (Delhi)(HC)

S. 69: Unexplained investments-Income from undisclosed sources -huge expenses -Additions to income based on facts-No substantial question of law. [S. 260A] 1078
Dismissing the appeal the Court held that the Appellate Tribunal had considered the grounds raised as well as submissions made on behalf of the assessee and recorded detailed reasons for its conclusion. The addition made by the Tribunal was justified. No substantial question of law. (B. P 1-4-1987 to 11-2-1999)
A. Narsinga Rao v. ACIT [2023] 155 taxmann.com 509 / (2024)460 ITR 526 (Telangana) (HC)

S. 69: Unexplained investments-Share capital -Addition made based on unproven and untested statements recorded during searches-Onus to prove investments bogus not discharged-Deletion of addition proper. [S. 132, 260A] 1079
In the facts of the present case, Hon'ble Court has held that the department could not produce any evidence to conclude that any part of the investment was false or bogus. The burden to prove otherwise rested on the department. Unless the initial onus has been discharged by leading some evidence that led to the conclusion that the investment was never made, the burden that was cast on the department remained undischarged. (AY. 2010-11)
PCIT v. PNC Infratech Ltd. (2024) 461 ITR 92 (All)(HC)

S. 69: Unexplained investments-Income from undisclosed sources-Alleged bogus purchases -Sales accepted-Input VAT credit and TCS credit-Addition is deleted. [S. 68, 69C] 1080
Held that the assessee having established with evidence the factum of having made purchases from HJM (P) Ltd. by producing copies of bills of purchases and the mode of purchases, copy of VAT returns and also submitted the quantitative tally of the purchases made by it during the entire year, and the AO having not pointed out any infirmity in the same, there is no basis with the Department for treating the purchases made by the assessee from HJM (P) Ltd. as bogus. Addition is deleted. (AY. 2017-18)
Vimal Coal (P) Ltd. v. Dy. CIT (2024) 232 TTJ 162 / 242 DTR 249 / 38 NYPTTJ 1104 (Ahd.) (Trib)

S. 69: Unexplained investments-Survey-Unrecorded advances-Cash in hand recorded in the books of account exceeded the amount of cash found -Addition is deleted. [S. 133A] 1081
Held that cash in hand as per the assessee's books of accounts as on the date of survey exceeded Rs. 41 lacs, the alternate contention of the assessee that the source of the advances allegedly given by it was the said cash in hand is acceptable, and, therefore, the impugned addition of Rs. 29,72,645 made by the AO by invoking the deeming provisions of s. 69 is not sustainable. (AY. 2019-20)
City Petroleums v. ACIT (2024) 232 TTJ 133 (UO) (Chd.) (Trib)

S. 69: Unexplained investments-Cash deposits-Investment in company is not explained-Investment is property-Not substantiated-Addition is affirmed-Sale of shares-Less than fair market value-Income from other sources-Difference in market value is taxed -Deduction is allowed to the extent addition confirmed of unexplained bank deposits. [S. 45, 56(2)(vii)(c)] 1082
The Tribunal held that the assessee has not explained the source of cash deposits and investment in property. Order of the AO is affirmed. As regards the sale of shares below

market value the difference is taxed under section 56(2)(vii)(c) of the Act. However, unexplained bank deposit is taxed, the assessee is allowed deduction in computing his income qua shares. (AY-2014-15)
K. P. Johny v. ACIT (2023) 157 taxmann.com 31 /37 NYPTTJ 1636 (2024) 227 TTJ 305 / 235 DTR 85 (Cochin)(Trib)

1083 **S. 69: Unexplained investments-Cash deposit-Bank-Demonetization period-Sales -Addition is deleted. [S. 68]**
The assessee filed an appeal against confirmation of Rs. 10 lakhs by the learned CIT(A). The Tribunal held that in view of the fact that the assessee is engaged in the sale of two wheelers which are normally sold in cash, there was no justification on the part of the CIT(A) to sustain addition of Rs. 10 lakhs out of Rs. 19,78,514 sustained by AO since out of cash deposit of Rs. 48,80,000 made by the assessee in the bank account during the demonetization period the Revenue has already treated an amount of Rs. 29,01,486 as explained. Accordingly the Tribunal held that the cash deposited on sale proceeds, addition is deleted. (AY. 2017-18)
G. T. S. Exports (P) Ltd. v. ACIT (2024) 229 TTJ 70 (UO) (Delhi)(Trib)

1084 **S. 69: Unexplained investments-Undisclosed sources-Survey-Stock-Additional income surrendered during survey -Income surrendered during the course of survey cannot be brought to tax under the deeming provisions of S 69 and 69A of the Act -Assessable as business income -Provision of section 115BBE cannot be applied. [S. 28(i), 69A, 115BBE, 133A]**
In the course of survey due to certain discrepancies, assessee surrendered additional income towards advances found written in a rough diary, unaccounted stock and excess cash in hand. The AO assessed the income as deemed income under section 69A of the Act under section 115BBE of the Act and taxed at @ 60 percent. On appeal the CIT(A) affirmed the order of the AO. On appeal the Tribunal held that the income surrendered cannot be assessed as undisclosed income. Addition is deleted. (AY. 2017-18)
Pramod Singla v. ACIT (2024) 227 TTJ 438 (Chd.) (Trib)

1085 **S. 69 : Unexplained investments-Appellate Tribunal-Cross appeal or cross objection -Right of assessee to support order on issue decided against him-Survey-Statement has no evidentiary value-Source of payment-Assessing Officer cannot ignore the registered document-Transaction pertaining to eight years prior to assessment year -Addition is deleted-Marriage expenses of son -expenditure recorded in books of assessee's wife's proprietary concern -Deletion is affirmed-Telescoping benefits to additional in-come and undisclosed outgoings. [S. 69C, 131, 133A(3)(iii), 254(1), ITAT R. 27]**
Held that Rule 27 of the Income-tax (Appellate Tribunal) Rules, 1963, sup-ported the assessee's case since the issue was inherently related to the ground taken by the assessee before the Commissioner (Appeals), who deleted the additions on the merits but decided the legal aspect against the assessee. The assessee can argue the issue in the absence of any appeal or cross-objection filed by the assessee. Merely on the basis of statement in the course of survey, addition cannot be made. Tribunal also held that the Assessing Officer cannot ignore the registered document. Transaction pertaining to eight years prior

to assessment year, no addition can be made. Marriage expenses of son is recorded in books of assessee's wife's proprietary concern hence, the deletion is affirmed. CIT(A) is justified in giving telescoping benefits to additional income and undisclosed outgoings. (AY. 2017-18)
ACIT v. Naresh Jain (2024)116 ITR 307 (Jaipur)(Trib)

S. 69: Unexplained investments-Purchase of mobile phone-Recorded in the books of account-Advance for purchase of car -Loose sheet-Dumb documents-Addition cannot be made-Purchase of goods recorded in the books of account-Addition is deleted -Unexplained jewellery -Matter remanded to Assessing Officer-Wedding expenditure -Addition is deleted-Expenses incurred for construction of residential house -Source explained and reflected in the books of account -Addition is deleted -Purchase of foreign currency-Explained the source of purchase -Addition is deleted. [S. 69A, 69C, 131(IA), 132, 132(4A), 153C] 1086
Held that the purchase of mobile phone is recorded in the books of account hence, addition cannot be made as unexplained investment. Advance for purchase of car, addition cannot be assessed as unexplained expenditure. Loose sheet found in the course of search is a dumb document. Onus is on department to collect cogent corroborative evidence, addition is deleted. Purchase of goods is recoded in the books of account, addition is deleted. As regards unexplained jewellery, the matter is remanded to the Assessing Officer. Payment to event management and catering payments are made against tax invoices raised along with goods and services tax. Hence, addition is deleted. As regards cash found which is reflected in the books of account, addition is deleted. Expenses incurred for construction of residential house source explained and reflected in the books of account. Addition is deleted. Purchase of foreign currency, explained the source of purchase, addition is deleted. (AY. 2012-13 to 2020-21)
Kiran Pal Singh v. Dy. CIT (2024) 115 ITR 33 (SN)(Delhi)(Trib)

S. 69: Unexplained investments-Survey-Surrender of income -Stock offered as business income-Assessable as business income-Special rate of tax cannot be applied. [S. 115BBE, 133A] 1087
Held that income offered in the course of survey as additional stock is assessable as business income. Addition cannot be made as undisclosed investment and special rate of tax as per section 115BBE cannot be applied. (AY. 2019-20)
Milkhi Mal Des Raj Jain v. ACIT (2024)114 ITR 17 (Amritsar)(Trib)

S. 69: Unexplained investments-Alleged purchase of land-No land is purchased -it was only proposal-Addition is deleted. [S. 132] 1088
Held that there was proposal to purchase land and no land is purchased during the year. Addition is deleted. (AY. 2007-08 to 2009-10)
ACIT v. Jindal Poly Films Ltd. (2024)114 ITR 72 (SN)(Delhi)(Trib)

1089 **S. 69: Unexplained investments -investment in the books of account -Evidences to prove genuineness of the purchase -Addition is deleted. [S. 143(3), 145]**

The investment is through banking channel, which is duly supported by the bank statement given by the assessee. It is also reflected in the balance sheet filed with the return of income and wealth-tax records. Thus, once the investment has been shown in books and the source of the investment are also from the books, then no addition u/s. 69 can be made. (ITA No. 531/M/2024, Dt. 22/03/2024) (AY 2012-13)

Sureshchandra Seksaria HUF v. ITO (Mum) (Trib.) (UR)

1090 **S. 69: Unexplained investments-Unexplained money -Agricultural activities -Mistakenly reported as gross instead net income -Affidavit explaining the facts -Not cross examined Content is proved to be correct unless rebutted by evidence -Addition is deleted -Delay in filing of appeal is condoned. [S,69A 115BBE]**

Held that the assessee had filed an affidavit dated February 15, 2018 but neither the Commissioner (Appeals) nor the Assessing Officer had discussed the facts declared by the assessee in an affidavit. The Department did not dispute the contents of the affidavit dated February 15, 2018 wherein the assessee claimed that his only source of income was agricultural activity and he had not invested or expended the alleged amount. The assessee was never cross-examined by the Assessing Officer. Therefore, the averments contained in the duly sworn affidavit were to be accepted as correct unless rebutted by evidence. Accordingly, the addition of Rs. 15,50,000 made by the Assessing Officer is deleted. (AY. 2016-17)

Madan Lal v. ITO (2024)113 ITR 636 (Jodhpur)(Trib)

1091 **S. 69: Unexplained investments-Source of investment in liquor business-Agricultural income -Loan-Partly accepted the explanation -Rejection of books of account and estimating net profit at 5 per cent of purchase price of stock that was put to sale is affirmed. [S. 145]**

Assessing Officer made addition under section 69 on account of unexplained investment in liquor business of assessee. CIT(A) upheld the addition. On appeal the assessee submitted that source of investment was agricultural income earned by his family members. He also produced confirmation letters from family members along with pattadar passbooks of family members in support of their land-holdings and also produced copies of return of income of his family members, certificates issued by Village Revenue Officer evidencing their agricultural land holdings and return of income filed by his brother to prove his creditworthiness. Tribunal held that since assessee had furnished sufficient evidence to prove that source of investment was agricultural income earned by his family members, relief was to be granted to assessee to extent of Rs. 5 lakhs towards agricultural income and Rs. 2 lakhs towards loan from brother as explained, out of Rs 15 lakhs for which addition made under section 69. Tribunal also held that as the assessee has failed to produce sales bills to support sales admitted during year and neither produced books of account for verification, Assessing Officer was justified in rejecting book results of assessee and estimating net profit at 5 per cent of purchase price of the stock that was put to sale. (AY. 2016-17)

Chandrasekhar Yernena v. ITO (2024) 209 ITD 307 (Visakha) (Trib.)

S. 69: Unexplained investments-Cash Credits-unexplained advances -Cash and stock discrepancies-Survey-Retraction-Senior Citizen -Retraction is valid -Shortage of stock -Gross profit rate of 8.02 Per Cent-Statement recorded under Section 131 has no evidentiary value in absence of corroborative evidence -Assessment of disclosed income is invalid -Diary found during survey -Entries giving names and amounts without other details -No inquiry made to establish genuineness of transactions -Addition is not justified-Excess cash found during survey -Addition is affirmed. [S. 131, 133A] 1092

Held that in the order of the Assessing Officer there was no whisper of rebuttal of the contents of the retraction letter as well as the affidavit filed by the assessee. He had summarily rejected the retraction and proceeded to make the additions in the hands of the assessee. The Commissioner (Appeals) had also rejected the retraction made by the assessee. The retraction letter and affidavit had been filed within a reasonable span of two weeks from the conclusion of the survey proceedings. The assessee duly explained that being a senior citizen, he was under great shock and mental agony and had written the letter once he was able to recover from the shock of the survey proceedings. It was not a case where the assessee had waited for issuance of the show-cause notice by the Assessing Officer before making the retraction from the surrender. For the two-week intervening period, the assessee had provided necessary explanation, which was reasonable given the facts and circumstances of the case so that the re-traction did not lose significance and could not be held as an afterthought. That the stock position was wrongly recorded by the survey team as evident from the findings of the Commissioner (Appeals), which support the contention advanced by the assessee that the surrender towards excess stock had been wrongly taken by the survey team based on incorrect facts, and that the survey team had completely faltered in determining both the value of stock per books of account and the stock physically found in the premises. The assessee's contention was, therefore, acceptable. While deleting the addition towards excess stock, the Commissioner (Appeals) had recorded a finding that there was, in fact, shortage of stock, which had been arrived at on the basis of material provided by the assessee during the assessment and duly verified by the Assessing Officer during the remand proceedings and, thus, could not be in dispute. The Commissioner (Appeals) had considered the shortage of stock as being outside the sale recorded in the books and directed application of gross profit rate of 10 per cent., which was restricted to 8. 02 per cent per accepted gross profit rate for the year under consideration, as alternately contended by the assessee. That the advances noted in the diary seized during the course of survey contained certain names with amounts written against those names without mention of any dates or description to show whether such amounts were received, or paid, by the assessee and the financial year thereof. No documentary material had been found during the course of survey to corroborate such entries nor was there any tangible material in the possession of the survey team to demonstrate that the assessee had undertaken any such transaction with the persons named therein. It was the duty of the Assessing Officer to at least examine such persons to establish the truthfulness of the transaction claimed to be undertaken, which he failed to do. Such noting had no link or connection with the business of the assessee. There was no material justifying the survey team seeking the assessee's surrender, which was taken

under coercion and threat and, hence, unsustainable in the eyes of law. The assessee had demonstrated that the statement recorded during survey was factually incorrect and recorded under coercion. The addition made towards alleged advances, which had been sustained by the Commissioner (Appeals), was directed to be deleted. That as for the excess cash found over and above that recorded in the books of account was concerned, the retraction made by the assessee was not factually correct and could not be accepted. The Assessing Officer's action in bringing to tax the excess cash found during the course of survey, which was upheld by the Commissioner (Appeals), was confirmed. (AY. 2018-19)
Lachhman Dass Bansal v. Dy. CIT (2024) 110 ITR 439 (Chad.)(Trib)

1093 **S. 69: Unexplained investments-Income from undisclosed sources-Partner in firms carrying construction projects-Entries in Diary seized during search -Cash received and paid-Undisclosed income was disclosed by partners-Deletion of addition is affirmed.**
Held, dismissing the appeal, that the Commissioner (Appeals) had held that the Assessing Officer did not disprove that the entries in the diary seized related to the money transactions received for various housing projects of the firms and the assessee was maintaining the account of the partners of the various firms. Order of CIT(A) is affirmed. (AY. 2014-15)
Dy. CIT v. Alpeshkumar Rasiklal Lakhani (2024) 110 ITR 53 (Trib) (SN)(Ahd.)(Trib)

1094 **S. 69: Unexplained investments-Land purchased in earlier year-Delayed payment -Registered sale without making payment to vendor -Addition cannot be made as undisclosed income.**
Held that the land was purchased earlier through the sale deed and payment therefore, was made subsequently. There were several justifiable factors for the delayed payment against the purchase of land. No document was brought on record by the Department suggesting that the assessee had incurred the expenses in connection with the purchase of land in cash so as to apply the provisions of section 69 of the Income-tax Act, 1961. Merely because the assessee got the property transferred through registered sale without making payment to the vendor, the provisions of section 69 of the Act would not be attracted. (AY. 2015-16)
Hyfun Frozen Foods P. Ltd. v. ITO (2024)110 ITR 37 (SN) (Ahd.) (Trib)

1095 **S. 69: Unexplained investments-Bogus purchases-Accommodation entries-Disallowance is restricted at rate of 6 per cent of bogus purchases -Sale of shares-Explained the source of purchase-Order of CIT(A) deleting the addition is affirmed-Reassessment is affirmed. [S. 147, 148]**
Tribunal restricted the disallowances at rate of 6 per cent of bogus purchases. As regards purchase of shares, order of CIT(A) deleting the addition is affirmed. As regards re-assessment there existed new information with Assessing Officer from credible sources, but he had also applied his mind and recorded conclusion that the purchases claimed were non-genuine and therefore bogus. Reassessment is affirmed. (AY. 2012-13)
DCIT v. Center Point Gems (P.) Ltd. (2024) 208 ITD 213 (Surat)(Trib.)

S. 69: Unexplained investments-Unexplained money-Survey-Deeming provision-Statement in the course of survey-Bald allegation of Assessing Officer is not sufficient to consider income declared as unexplained investment-Income offered in the course of survey cannot be assessed as unexplained and has to be assessed as business income. [S. 69A, 115BBE, 133A] 1096

Allowing the appeal, Tribunal held that the assessee had declared the additional investments found as business income received by it in the normal course of business. Further, the quantum and basis of the amount surrendered had duly been stated by the assessee in its statement recorded during survey and as declared in the return of income. This had been accepted as it is, since the Assessing Officer nowhere denied or controverted these facts in the assessment order. The assessee had discharged its obligation to prove the source of investments declared by him, and the onus shifted to the Department to disapprove it. The income which was offered to tax stood credited in the profit and loss account of the assessee for the year. The Assessing Officer simply mentioned that the submissions of the as-sessee were not found acceptable as no cogent reasons supported by documentary evidence were being cited by him during survey. In case, the in-vestment was to be treated as unexplained, the Assessing Officer had to bring on record some conclusive evidence or convincing finding as how the investment was being treated as unexplained. In the circumstances, it was a bald allegation of the Assessing Officer to consider the income declared as an unexplained investment. As regards the difference in stocks found by the authorities had no independent identity and was part and parcel of the entire stocks. Therefore, it could not be said that there was an undisclosed asset which existed independently and so as to treat the receipts not declared to the Department as receipt from business. The assessee had been confronted with not just the discrepancies found during the course of survey but the nature and source thereof and it clearly emerged that the source of such income was from his business operations. The income of Rs. 1 crore surrendered during the course of survey could not be brought to tax under the deeming provisions of sections 69 and 69A of the Act and had been rightly offered to tax under the head Business income. (AY. 2019-20)
Krishan Kumar v. Dy. CIT (2024) 110 ITR 476 (Chd)(Trib)

S. 69: Unexplained investments-Cash deposit of 3 lakh-Returned income of assessee is more than Rs. 50 lakhs, cash deposit of around 3 lakhs could not be treated as unexplained investment. 1097

Assessing Officer treated cash deposit of Rs. 3 lakh as unexplained investment of assessee. The order of the AO is affirmed by the CIT(A).

On appeal, the Tribunal held that explanation of assessee that cash deposit of Rs. 3 lakh had been received out of petty loans given to friends and relatives, could not be brushed aside lightly, considering returned income of assessee being more than Rs. 50 lakhs and sale consideration being more than Rs. 2 crore and moreover returned income and capital gain go on to show status of assessee thus, deposit of petty sum on different dates should not be looked upon adversely. Addition is deleted. (AY. 2013-14)
Ravi Jakhar v. ACIT (2024) 208 ITD 633 (Mum) (Trib.)

1098 **S. 69: Unexplained investments-Survey-Amount surrendered-money lending-Assessable as business income-Cannot be taxed under deeming provision. [S. 28(i), 115BBE, 133A]**
Assessee and his family was engaged in money lending business. During course of survey conducted upon assessee, promissory notes were found against which assessee family advanced loans. On basis of these notes, it transpired that there was change in debtors' balances as on 31-03-2016 and debtor's balances as on 15-09-2016. Since assessee could not explain said difference, it agreed to offer same in his return of income to extent of certain amount whereas balance sum was offered in hands of assessee's son. Assessee treated same as interest income and offered additional income as business income and paid due taxes thereon. Assessing Officer held that since assessee could not substantiate fact that advances were out of money lending business, income was assessed as undisclosed investments under section 69.
On appeal the Tribunal held that there is nothing on record that assessee had any other sources of income. Any discrepancy in debtors, in such a case, would be part and parcel of assessee's money lending business and it could very well be said that discrepancy had arisen out of unaccounted in-come earned by assessee from this business only, and therefore, same would be taxable as business income only. On facts, assessee had correctly offered additional income as business income only and provisions of section 69 read with section 115BBE would have no application. (AY. 2017-18)
Rameshlal Kailash v. ITO (2024) 207 ITD 217 (Chennai) (Trib.)

1099 **S. 69: Unexplained investments-Investment in purchase of a farm house-Survey-Reassessment is up held-Addition is deleted on the ground that no opportunity to cross examination is provided-No addition can be made ignoring the registered sale deed. [S. 133A, 147, 148]**
During survey proceedings on third party it was found that assessee had purchased a farm house. It was further discovered that sale deed was registered at Rs. 1.2 crores at circle rate, but cash component of Rs. 5.41 crores was also paid over and above registered value of Rs. 1.2 crores and that furthermore, assessee had also received payments aggregating to Rs. 3.2 crores during relevant year from person acting on behalf of assessee in said transaction and therefore, even source of payment of Rs. 1.2 crores to seller might not be genuine. Based on said material, Assessing Officer issued notice under section 148 to assessee and thereafter made assessment by estimating cost of acquisition of property and making addition under section 69. CIT(A) affirmed the order of the AO.
On appeal the Tribunal held that information on basis of which Assessing Officer had initiated proceedings under section 147 was certain and it could be construed to be sufficient and relevant material on basis of which a reasonable person could have formed a belief that income had escaped assessment and, therefore, reassessment proceedings initiated by Assessing Officer were within jurisdiction and valid in eyes of law. However, since addition had been made by Assessing Officer ignoring documentary evidence in form of registered sale deed which is a best evidence for finding actual sale value and in absence of any other material to show that transactions involved cash outside sale consideration mentioned in sale deed and in absence of any corroborative evidence addition was not justified. Further considering fact that entire addition made

by Assessing Officer was based on statements of witnesses which had been retracted thereafter and no opportunity of cross examination was granted to assessee by Assessing Officer, Commissioner (Appeals) erred in upholding addition made by Assessing Officer. (AY. 2012-13)
Maple Destinations and Dreambuild (P.) Ltd. v. DCIT (2024) 207 ITD 376 (Delhi) (Trib.)

S. 69: Unexplained investments-Survey-Cash and stock-Excess stock offered as business income-Deeming provision is not applicable-Special rate of tax inapplicable-Statement under section 131 is no evidentiary value in absence of corroborative evidence-Entries in the Diary-No supporting evidence-Addition is not valid. [S. 69A, 115BBE, 131, 133A] 1100
Held that the income surrendered during the course of survey could not be brought to tax under the deeming provisions of section 69A but has to be assessed to tax under the head "Business income" as rightly offered by the assessee. The question of application of section 115BBE did not arise and the normal rate of tax ought to apply. The Assessing Officer was directed to assess the income under the head Income from business or profession and apply the normal rate of tax. Held that once the assessee had explained that the excess cash found during survey was out of unrecorded sale transactions, in the absence of anything to the contrary on record in terms of any other activity undertaken by the assessee other than its business activity, the deeming provisions would not be attracted. The unrecorded cash had to be assessed under the head Business income as rightly done by the assessee. The question of application of section 115BBE did not arise and the Assessing Officer was directed to assess the income under the head "Income from business or profession" at the normal rate of tax. Held that a statement recorded under section 131 during the course of survey had no evidentiary value in the absence of any corroborative evidence on record. Therefore, the statement of the assessee recorded under section 131 during the course of survey and the subsequent affirmation thereof by the assessee by way of a surrender letter, could not, on a standalone basis and without any corroborative evidence, fulfil the statutory mandate of the deeming provisions of section 69A. As a logical corollary the statement and the subsequent affirmation could not be the basis for the assessment. Referred *CIT v. P. Balasubramanian (2013) 354 ITR 116 (Mad)(HC) CIT v. S. Khader Khan Son (2008) 300 ITR 157(Mad)(HC)*
Held there were 77 entries in the diary found during the survey giving names and corresponding amounts. The names were incomprehensible without the full name, address, father's name and other identity details. There was no description of whether the respective amounts written against the names were received, or paid, by the assessee, the dates of such receipt or payment or the financial year of the transactions. There was no tangible material in the Revenue's possession to demonstrate that the assessee had made any such transaction with the so-called persons mentioned in the diary. There was no basis for making the additions. (AY. 2018-19)
Jaswinder Singh v. Dy. CIT (2024) 109 ITR 377 / 230 TTJ 355 (Chd)(Trib)

1101 **S. 69: Unexplained investments-Seized documents-Hard disk-Investment in shares under FDI route-Allegation of Hawala-Source of source also explained-Addition were made on merely based on suspicion-Addition is deleted. [S. 153C, 292C]**

During search, a hard disk was seized from premises of assessee which contained data related to money to be sent and amount received in India through FDI route. Assessing Officer held that the assessee had sent certain million USD in hawala route to Cyprus to secure such funds through FDI route and hence same was to be taxed in hands of assessee-company. He held that amounts sent was undisclosed investment made by assessee for obtaining funds through FDI route to avoid tax incidence which had been introduced in its books and accordingly, made additions under section 69. CIT(A) upheld the order of the Assessing Officer.

On appeal the Tribunal held that there was no evidence to prove that amounts sent shown in hard disk was actually amounts sent by assessee-company in hawala route which had ultimately found its way in form of share capital and share premium under FDI route. Also FT&TR reference was made to Cyprus tax authorities, pursuant to which report duly con-firmed that one 'LGF fund' had raised monies through issue of shares and those monies had been utilized by them for making investment in shares of assessee-company under FDI route. Since source of source was also duly established and proved by assessee-company, addition made by Assessing Officer were merely based on suspicion and were to be deleted. (AY. 2013-14)

Alchemist Touchnology v. ACIT (2024) 206 ITD 256 (Delhi) (Trib.)

1102 **S. 69: Unexplained investments-Un explained money-No excess stock-Survey-Merely on the basis of statement no addition can be made. [S. 69A, 133A]**

Held that no physical stock and no excess cash were actually found at the time of survey at the premises of the assessee, addition under S. 69 and 69A made by the AO towards alleged excess stock and excess cash cannot be sustained solely on the basis of voluntary surrender of additional income by the assessee. (AY. 2018-19)

Saru Enterprises (P) Ltd. v. ACIT (2024) 232 TTJ 441 / 244 DTR 11 / 38 NYPTTJ 1325 (Chd)(Trib)

1103 **S. 69: Unexplained investments-Income from undisclosed sources-Cash deposits in bank-Demonetization-Sales accepted-Books of account is not rejected-Addition is deleted. [S. 68, 115BBE]**

Revenue has not rejected the books of accounts produced before the AO and CIT(A) and accepted the sales made by the assessee including the sales made in demonetized currency. From the circular issued by the CBDT, it is very clear that while making additions towards cash deposits in demonetized currency, the AO needs to analyze the business model of the assessee, its books of account and analysis of sales, etc. In this case, as per the analysis furnished by the assessee in respect of total sales, cash sales including the cash received in demonetized currency and cash deposits, there is negligible amount in demonetized currency. Addition is deleted. (AY. 2017-18)

Tamilnadu State Marketing Corporation Ltd. v. ACIT (2024) 232 TTJ 233 / 38 NYPTTJ 1282 (Chennai)(Trib)

S. 69A : Unexplained money-Failure to consider TDS challans-Matter is remanded to the file of the Assessing Officer-Directed to pay cost of Rs. 15000 to the Tamil Nadu State Legal Services Authority. [S. 142(1), 143(3), 147, 148, Art. 226] 1104

Petitioner did not file return of income for relevant year. Pursuant to notice under section 148, proceedings were initiated against assessee. Assessee submitted that she sold a property during financial year 2017-18 and invested sale proceeds in fixed deposits and earned interest thereon and along with such reply, assessee attached several documents. Being dissatisfied with such reply as regards above mentioned interest income, show cause notice was issued. Assessee failed to reply thereto and impugned assessment order was passed thereafter.

On a writ petition filed by the assessee the Court held that since Assessing Officer took note of sale deed but income tax challan and TDS were not taken into consideration and assessee had not replied to show cause notice, matter is remanded back to Assessing Officer by imposing cost of Rs 15000 on assessee. (AY. 2019-20)(SJ)

Basheera Begum v. Jt. CIT (2024) 300 Taxman 160 (Mad.)(HC)

S. 69A : Unexplained money-Gift-Denied by donor-Order of Tribunal deleting the addition is set aside. [S. 260A] 1105

Allowing the appeal of the Revenue the Court held the Tribunal had deleted the addition merely on the ground that no opportunity was provided for cross-examination. On the basis of the statement made by the donor, the burden had shifted upon the assessee. The transaction was not genuine but colourable. Hence, the Tribunal had wrongly deleted the addition. The money had been routed indirectly from the firm to the assessee's account under the garb of gifts. Therefore, the order passed by the Tribunal pertaining to the deletion of the two amounts claimed by the assessee to be gifts was set aside and the order passed by the Assessing Officer was restored. (AY. 2001-02)

CIT v. Virendra Behari Agrawal (2024) 464 ITR 380 (All)(HC)

S. 69A : Unexplained money-Non-resident-Books of account not maintained-Transfer to NRO account-Only source of income in India is from interest on bank account and interest on income tax refund and he was not obliged to maintain any books of account in India-Order of Tribunal deleting the addition is affirmed. [S. 260A] 1106

Dismissing the appeal of the Revenue, the Court held that since assessee gave specific explanation of a split up of money in question and Tribunal meticulously examined and elaborately discussed documentary record in support of said explanation of money ingress in bank account of assessee, addition made under section 69A was rightly deleted. Court also held that provision under section 69A did not apply in case of assessee as his only source of income in India was from interest on bank account and interest on income tax refund and he was not obliged to maintain any books of ac-count in India. (AY. 2017-18)

CIT (IT) v. Hersh Washesher Chadha (2024) 297 Taxman 471 /336 CTR 1 / 471 ITR 764 (Delhi)(HC)

1107 **S. 69A : Unexplained money-Assessing the miscellaneous business income as income from other sources and applying the special rate as per section 115BBE is not justified. [S. 115BBE]**
Held that revenue is not justified in assessing the miscellaneous income as income from other sources and applying the special rate as per section 115BBE of the Act. (AY. 2019-20)(ITA No. 112 (ASR) of 2023 dt. 17-6-2023)
Deepak Setia v. Dy. CIT (2023) 106 ITR 125 (Amritsar) (Trib)

1108 **S. 69A: Unexplained money-Frequent cash withdrawals and deposit-Only peak shortage could be added as unexplained under section 69A.**
Held that where the assessee had made frequent cash withdrawals and deposits, he should not be denied the benefit of peak credit and it was only peak shortage which could be added as unexplained income under section 69A. (AY. 2011-12)
Kamal Chand Sisodiya v. ITO (2024) 167 taxmann.com 671 (Indore)(Trib)

1109 **S. 69A: Unexplained money-Demonetisation-Bank notes-Complete record is maintained-Receipts from the customers cannot be assessed as unexplained.**
Dismissing the appeal of the Revenue the Tribunal held that the assessee has maintained complete record of customers. Receipts from the customers cannot be assessed as unexplained. Order of CIT(A) is affirmed. (AY. 2014-15, 2015-16, 2017-18)
ITO v. Mayurbhanj Central Cooperative Bank Ltd. (2024) 230 TTJ 655 / 240 DTR 17 (Cuttack)(Trib)

1110 **S. 69A: Unexplained money-Cash deposit-Demonetization-Sufficient stock-Sales-Sales shown in VAT return-Addition is deleted.**
Held that the Assessee has explained that the cash deposited in its bank account during the demonetization period was the amount available on ac-count of cash sales which have been shown in the regular books of account and also accepted as such by the VAT authorities. Addition is deleted. (AY. 2017-18)
R. M. Sales Corporation v. ITO (2024) 230 TTJ 701 / 240 DTR 201 / 167 taxmann.com 679 (Amritsar)(Trib)

1111 **S. 69A: Unexplained money-Cash deposits-Demonetization-Petrol pump-Not violated any provision of law or any Government guide-lines-Addition is deleted.**
Held that the cash balance available as per the cash book at the close of business hours on 15th Dec., 2016, which has been accepted by the Department hence the addition is deleted. (AY. 2017-18)
Nazir Ahmad v. ITO (2024) 230 TTJ 78 (UO)(Amritsar)(Trib)

1112 **S. 69A : Unexplained money Search-Excess jewellery-Financial year in which is found to be owner-Addition is deleted-Undisclosed in-come-Seized document-Addition is deleted. [S. 3, 4, 69, 153A of ITA, 1961]**
Held that as per S. 69A, the value of unexplained jewellery shall be deemed to be the income of that financial year in which the assessee is found to be the owner. The express terms of the charging provisions contained in S. 3 and 4 the subject of charge is

the income of the 'previous year'. Each 'previous year' is a distinct unit of time for the purposes of assessment and the profits made or the liabilities or losses incurred before or after the previous year is immaterial in assessing the income in a particular previous year. Having regard to the express language used in S. 69A, AO can legally bring to tax unexplained jewellery in the hands of the assessee in that financial year in which the assessee is found to be the owner. Addition as undisclosed income is deleted. (AY. 2013-14)
Dy. CIT v. Chelladhurai Rajasingh (2024) 231 TTJ 601 (Chennai)(Trib)

S. 69A: Unexplained money-Cash deposits-Cash withdrawn earlier-Addition is deleted. 1113
Assessee having earlier withdrawn large amount of cash from her bank ac-count on various dates as reflected in the bank statement, the contention of the assessee that the same cash has been redeposited in the bank ac-count has to be accepted in the absence of anything to show that the cash withdrawn from the bank has been invested or utilized elsewhere. Addition is deleted. (AY. 2010-11)
Joginder Kaur v. ITO (2024) 231 TTJ 320 / 241 DTR 97 (Amritsar)(Trib)

S. 69A: Unexplained money-Search and seizure-Gold found during search-1300 grams-Status of family-Addition is deleted. [S. 132] 1114
Held that the assessee and her family members being high net worth individuals, the whole of the gold ornaments of 1300 gms found at the time of search are to be treated as clearly explained as per CBDT Instruction No. 1916, dt. 11th May, 1994 and, therefore, the impugned addition under s. 69A is not sustainable. Followed *Ashok Chaddha v. ITO (2011) 63 DTR 353 /245 CTR 416(Delhi)(HC)* (AY. 2021-22)
Kirti Singh v. ACIT (2024) 231 TTJ 1051 / 242 DTR 269 / 204 ITD 487 (Delhi)(Trib)

S. 69A : Unexplained money-Cash deposited in the bank-Charitable society-PAN of chairman-Addition is deleted. [S.271AAC] 1115
Tribunal held that the bank account is in the name of a charitable society and all the entries in the bank account pertain to the regular day-to-day activities of the said society which is a regular income-tax assessee, addition under s. 69A could not be made in the hands of assessee, merely because the assessee, in his capacity as president/chairman of the society, gave his own PAN for complying with the KYC procedure as part of the banking formalities. Addition is deleted. (AY. 2017-18)
Rotluanga Stephen v. ITO (2024) 231 TTJ 96(UO) (Gauhati)(Trib)

S. 69A: Unexplained money-Cash deposits in bank account maintained with a co-operative credit society-Collection agent of the pigmy depositors-Matter remanded to the AO for verification. [S. 194H, Form No 26AS] 1116
Tribunal restored the matter to the AO with a direction to give one more opportunity to the assessee to file the requisite details before him to substantiate that all the deposits made in the bank account are the maturity proceeds of the pigmy depositors which in turn has been given back to them and it is not the money of the assessee and that it has earned only commission income for the services rendered as collection agent of the pigmy depositors. (AY. 2013-14, 2014-15)
Sarika Vitthal Gund v. ITO (2024) 232 TTJ 465 / 243 DTR 401 (Pune)(Trib)

1117 **S. 69A: Unexplained money-Disclosure of unexplained jewellery in the course of search-Income offered in the return of income-Assessing Officer is justified in assessing the income as income from undisclosed sources and assessing the income as per section 115BBE of the Act. [S. 155BE, 132]**

Tribunal held that the assessee has voluntarily admitted and disclosed in the return undisclosed income on account of unaccounted jewellery found during the course of search carried out in her premises on account of search warrant in the name of her husband. The AO is justified in assessing the amount by invoking the provisions of S. 69A and applying the special provision of S. 115BBE of the Act. (AY. 2018-19)

Kolaparthy Suvarna Lakshmi v. DCIT (2024) 229 TTJ 320 / 237 DTR 286 (Hyd)(Trib)

1118 **S. 69A: Unexplained money-Income from undisclosed sources-Cash deposits in banks-Demonetization-Sale of goods-Deposited by customers-Addition is deleted. [S. 133(6)]**

Held that when the sales is not disputed cash deposited by customers though SBN cannot be considered as unexplained money in the hands of the assessee as the same has not been received by the assessee directly and the same was received by the bank which was permitted till 31st December, to be received by the bank. Addition is deleted. (AY. 2017-18)

Ramesh v. ITO (2024) 229 TTJ 746 / 238 DTR 57 (Jodhpur) (Trib)

1119 **S. 69A: Unexplained money-Undisclosed income-Search-Loose sheets-Dumb documents-On money-No reference of the assesseee in the alleged documents seized-Provisions of S. 132(4A) and 292C cannot be applicable-Addition cannot be made on the basis of suspicion and surmise. [S. 132A, 153A, 292C]**

AO made addition towards purported on-money in the hands of the assessee on the ground that there is a close proximity between date of sale of property on 23rd Dec., 2015 and reference of cash payment in the seized cash book on 31st Dec., 2015. CIT(A) deleted the addition.

On appeal the Tribunal held that cash book in excel sheet seized did not contain any reference to the name of the assessee or concerned property. No further incriminating material was found during the course of search in the case of the assessee or in the case of search of Poiisetty Somasundararn with regard to alleged payment of on-money. Moreover, the date of transfer of property was 23rd Dec., 2015, whereas the alleged cash payment was purportedly made on 31st Dec., 2015. No prudent person will transfer the property and receive cash on subsequent date. There is no admission of on-money payment in the statement recorded under S. 132(4) either in the case of Poiisetty Somasundararn or in the case of the assessee. Yellluri Chandrasekar Rao Authorized Representative of Poiisetty Somasundararn has denied payment of on-money. He further stated that cash was sent to Bangalore for the purpose of purchase of tobacco and that the said cash is not connected in any way to the immovable property transactions with the assessee. The managing partner of the assessee-firm had also denied receiving any on-money in cash from Poiisetty Somasundararn. The provisions of S. 132(4A) and 292C cannot applied in the case of the assessee. Tribunal held that merely on the basis of suspicion and surmise addition cannot be made, relied on *CIT v. Daulatram Rawatmull*

(1964) 53 ITR 574 (SC). The order of the CIT(A) deleting the addition is affirmed. (AY. 2016-17)
ACIT v. Vibgyor Net Connections (2024) 228 TTJ 1 / 234 DTR 257 (Chennai) (Trib)

S. 69A: Unexplained money-Deposits-Bank account-Non-Resident-Demonetisation-Amount received on cancellation of reservation of hotel booking-Addition is deleted. [S. 68] 1120
Held that considering the close proximity of the aforesaid withdrawal and the cash deposits, assessee's explanation that the cash deposit was made out of the earlier cash withdrawal is accepted. As regards other credit which is received on account of cancellation of hotel reservation. Addition is deleted. (AY. 2017-18)
Hersh Washesher Chadha v. ACIT (IT) (2024) 227 TTJ 137 / 233 DTR 121 (Delhi)(Trib)

S. 69A: Unexplained money-Un explained expenditure-Search and Seizure-Fixed deposit receipts in name of wife-Addition is deleted-Amount spent on marriage-Addition on estimate basis-Restricted to 60% of estimated amount-Personal expenditure-No incriminating material is found-Rental payment-Estimation of rent for 18 months-Payment of advance tax-Not able to explain the source-Addition is justified-Overseas Trip expenses and investment in benefit fund-Failure to show the source of investment-Addition is justified-Bank deposits-Seized passbook-Incriminating material-Addition is justified-Payments towards transponder hire, purchase of allied equipment, uplinking facility, and telecom service provider-No evidence of payment-addition is deleted-Bills found in Assessee's name remanded for re-examination-Imported car-Gift-Denied by alleged gift giver-Matter remanded to determine real owner-Seizure of cash gold and silver article from premises of uncle-Assessment is bad in law. [S. 132, 153C, 158BC] 1121
Tribunal held that considering the documents found in the course of search and seizure and explanations of the assessee, the Tribunal held that, fixed deposit receipts in name of wife; hence addition is deleted. Amount spent on marriage based on estimate basis, addition is restricted to 60% of estimated amount. No addition can be made on account of personal expenditure as no incriminating material is found. As regards rental payment the rent is estimated for 18 months. As regards payment of advance tax the assessee could not explain the source hence addition is affirmed. As regards overseas trip expenses and investment in benefit fund the assessee could not explain the source of investment hence the addition is justified. Seized passbook is incriminating material and the assesseee could not ex-plain the source the addition is justified. As regards payments towards transponder hire, purchase of allied equipment, uplinking facility, and telecom service provider there is no evidence of payment hence the addition is deleted. As regards bills found in assessee's name the issue remanded for re-examination. As regards imported car alleged received by gift which is denied by alleged gift giver. Matter remanded to determine real owner. As regards seizure of cash gold and silver article from premises of uncle no addition can be made in the assessment of the assesseee. Addition is deleted. (. BP 1987-88 to 1997-98 up to September 24, 1996, 2017-18)
V. Bhaskaran v. ACIT (2024)116 ITR 135 (Chennai)(Trib)

1122 **S. 69A: Unexplained money-Sales-Demonetisation-Deletion of addition is affirmed. [S. 68]**
The asseesseee had sufficient cash balance to make the cash deposits throughout the year and also during the demonetisation period. He had submitted the entire sale bills before the Assessing Officer along with the details of cash sales. Order of CIT(A) deleting the addition is affirmed. (AY. 2015-16, 2017-18)
Subhash Chand Gupta v. ACIT (2024) 116 ITR 14 (SN)/ [2025] 210 ITD 118 (Delhi)(Trib)

1123 **S. 69A: Unexplained money-Remand report-Single percentage of Commission for both receipts is not proper-Matter remanded to Assessing Officer to reconsider issue and apply appropriate rate for estimation of income. [S. 147, 148]**
Return of income is not filed under section 139 or in response to notice under section 148. CIT(A) after considering the remand report affirmed the addition. On appeal the Tribunal held since the deposits in the assessee's bank account represented two kinds of receipts, i. e., as a commission agent and in respect of drip irrigation system under the scheme of the State Government, there could not be a single percentage of commission for both these activities. Hence, the matter is remanded to the Assessing Officer with a direction to reconsider the issue and apply the appropriate rate for estimation of income. (AY. 2015-16)
Surkunti Narayana Reddy v. ITO (2024)116 ITR 75 (SN) (Hyd)(Trib)

1124 **S. 69A: Unexplained money-Income from undisclosed sources-Survey-Admission-Demonetisation-Cash deposits in bank-Statement retracted-No incriminating material was found-Addition cannot be made merely on the basis of statement during the survey. [S. 68, 131, 133A, 143(3)]**
Held that merely on the basis of statement in the course of survey which was retracted and no incriminating material was found addition cannot be made. Order of CIT(A) deleting the addition is affirmed (AY. 2017-18)
ACIT v. Nisha Jain (2024)115 ITR 669 / [2025] 170 taxmann.com 550 (Jaipur)(Trib)

1125 **S. 69A: Unexplained money-Demonetisation-Cash deposit-Cash sales-Estimation of gross profit is not justified-Cash sales deposit-ed cannot be assessed as cash credits-Rejection of books of account is justified-Appellate Tribunal-Duties-Precedent-Orders of non-jurisdictional High Court is binding. [S. 68, 145(3), 254(1)]**
Held that the estimation of gross profit is not justified. Cash sales deposited cannot be assessd as cash credits. Rejection of books of account is justified. The Tribunal also held that the reliance placed by the Commissioner (Appeals) on judgments of non-jurisdictional High Courts is appropriate and justified in the absence of any decision of the jurisdictional High Court on the same issue. (AY. 2017-18)
ITO v. Shree Balaji Processors (2024)115 ITR 40 / 169 taxmann.com 220 (Chd)(Trib)

1126 **S. 69A: Unexplained money-Cash deposits in bank-Demonetisation-Petrol pump-Cash flow chart-Addition is deleted.**
Held that the AO had prepared the cash flow chart without setting off the opening cash in hand. Addition is deleted (AY. 2017-18)
Padam Sarup Goel v. ITO (2024) 115 ITR 68 (SN)(Delhi)(Trib)

S. 69A: Unexplained money-Delay of 89 days in filing of appeal-condoned-Unexplained investments-Not filed the return-Disputed sale consideration-Addition made on wrong assumption of facts-Addition is deleted-Income not exceeding the maximum amount-Provision of section. 249(4) cannot be invoked. [S. 115BBE, 147, 148, 154, 249(4)] 1127

Held, that as the assessee was pursuing remedy by way of application under section 154 of the Income-tax Act, 1961, which was dismissed by the National Faceless Appeal Centre, delay of 89 days in filing the appeal is condoned. Held that the sole basis for the initiation of the proceedings under section 148 was the information received from the National e-Assessment Centre, according to which, the sale deed had been executed for a sale consideration in respect of a property measuring 11 cents situated in Kavoor village, Mangalore Taluk, wherein the assessee was neither the purchaser nor the vendor. On the other hand, the assessee produced her sale deed showing sale of a property by M measuring 0-05. 75 acres situated in Kotekar village, Mangalore Taluk for a sale consideration lower than that shown in the former document. The assessee had produced the source for the transaction as loan availed of from a bank. The Assessing Officer had made addition on the basis of wrong assumption of facts. The addition made by the Assessing Officer under section 69A is deleted. Tribunal also held that without the addition, the assessee's income did not exceed the maximum amount and, hence, is not liable to tax. Therefore, no advance tax was payable and the invocation of section 249(4) by the Commissioner (Appeals) is not justified. (AY. 2018-19)

Prameela Parameshwar Shettigar (Smt.) v. ITO (2024) 115 ITR 6 (SN)(Bang) (Trib)

S. 69A: Unexplained money-Cash deposit-Demonetisation period-Natural justice-Matter remanded to CIT(A) to explain the source of cash sales with required documents. [S. 44AD, 68, 143(3), 144B, 250(6)] 1128

Held that as non-compliance was the sole reason for the additional tax liability of the assessee, in the larger interest of justice, the matter is to be remanded to give an opportunity to the assessee to explain the nature and source of cash sales with documents such as (a) bank statements, (b) full details of customers to whom cash sales were made (c) letters of confirmation from such customers detailing cash purchases from the assessee (d) cash-sale tax-invoices (e) value-added tax and goods and services tax re-turns, etc. The Commissioner (Appeals) is to decide the addition on the merits after verifying the documents before passing a speaking order in terms of section 250(6) (AY. 2017-18)

Vasant Hirachand Rathod v. ITO (2024) 115 ITR 83 (SN) (Pune)(Trib)

S. 69A: Unexplained money-Trading in firecrackers-Cash deposited-Demonetisation-Cannot be assessed as undisclosed income. [S. 68, 145] 1129

Tribunal held that the Assessing Officer did not reject the books of account of the assessee hence the cash deposited cannot be assessed as undisclosed income. (AY. 2017-18)

Durga Fire Work v. ITO (2024)113 ITR 53 (SN)(Delhi)(Trib)

1130 **S. 69A: Unexplained money-Business of selling religious items in a Parsi Temple-Deposit of cash of Rs. 7.20 lakhs in bank account-Past savings-Demonetization period-Not maintaining the books of account-Addition is deleted.**

Assessee, an aged lady, was engaged in business of selling religious items like sandal wood, janoi, diva etc. in a Parsi Temple. Assessing Officer held that assessee had deposited cash aggregating to Rs. 20.32 lakhs in her bank account during period of demonetization. Assessing Officer assessed amounts of Rs. 7.20 lakhs as unexplained income of assessee under section 69A of the Act. CIT(A) upheld the order of the AO.

On appeal the Tribunal held that the assessee was carrying on business on small scale for past several years and she is not required to maintain books of account under law. Considering her age and business activities carried on by her, claim of past savings of Rs. 7.20 lakhs is deleted. (AY. 2017-18)

Bakhtawar Nariman Dalal v. ITO (2024) 209 ITD 191 (Mum) (Trib.)

1131 **S. 69A: Unexplained money-Cash deposits-Educational institutions-Hostel fees from students-Matter remanded to the file of CIT(A) for fresh adjudication. [S. 10(23C)(iiiad), 12A]**

Assessee is a charitable trust established primarily for providing education and running a school. Assessee filed its return of income declaring certain amount. Assessing Officer held that there were certain deposits in bank account of assessee trust including cash deposit of certain amount. Assessee submitted that cash deposits in question did not exclusively belong to trust but also included funds from two hostels. Assessing Officer held that deposits into bank account of assessee trust constituted unexplained cash/cheque credit and entire amount was added to total income of assessee under section 69A. Commissioner (Appeals) allowed appeal by deleting addition made by Assessing Officer concerning hostel fees, however, Commissioner (Appeals) did not adjudicate ground relating to denial of granting benefits of exemption under section 10(23C)(iiiad) stating that it was general and alternative in nature.

On appeal, the Tribunal held that since Commissioner (Appeals) had not decided on first ground of assessee, relating to exemption under section 10(23C)(iiiad) and assessee's contention that cash deposits in trust's bank account related to hostel receipts attributable to third parties had not been adequately substantiated through documentary evidence or a formal agreement establishing relationship between trust and hostel owners, matter is remanded back for fresh adjudication. (AY. 2011-12)

Ideal Education Trust v. ITO (2024) 209 ITD 479 (Ahd) (Trib.)

1132 **S. 69A: Unexplained money-Cash deposits-Demonetization period-Source explained-Addition is deleted. [S. 68, 115BBE]**

Assessee is Karta of HUF. During demonetization period, assessee deposited cash in bank account. Assessing Officer made addition as unexplained money under section 69A and taxed same under section 115BBE. CIT(A) affirmed the addition.

On appeal the Tribunal held that since assessee had recorded cash deposits in his books of account and source of cash deposits during demonetization period was also maintained the Assessing Officer is not correct in invoking provisions of section 69A and charging tax under section 115BBE. Addition is deleted. (AY. 2017-18)

Dipak Balubhai Patel (HUF) v. ITO [2024] 208 ITD 386/115 ITR 624 (Ahd) (Trib.)

S. 69A: Unexplained money-Cash credits-Cash deposits in NRO account-Previous withdrawals-Addition is deleted [S. 69A, 147, 148] 1133

The Tribunal held that the assessee had related details about investments and details of bank statements which clearly proved that the assessee has made total withdrawals of R. 35. 80 lacs and deposited in NRO account of Rs. 27.50 lacs. The status of assessee was accepted by Assessing Officer as NRI. The assessee had not done any business activity during the said period and stayed in India for a very few days. The Tribunal held that the Assessing Officer had treated the cash deposit merely on the basis of human probability without bringing any adverse evidence on record that such cash deposit was unexplained money of assessee when the assessee was having sufficient money in his two NRE and one NRO account and explained the in-vestment during the relevant period. Therefore, the A. O. was not justified in making addition of Rs. 27.50 lakhs and hence, deleted the addition. Since the addition was deleted on merits, the issue related to validity of the assessment was held to be merely academic. (AY. 2012-13)

Mahesh Chittubhai Patel v. ITO (IT) (2024) 112 ITR 187 /228 TTJ 752/236 DTR 281(Surat)(Trib.)

S. 69A: Undisclosed money-Cash deposits-Demonetization-Deposits tallying with cash sales, audited accounts, and no mismatch of purchases, sales, and stock-in-trade-Addition is not justified. [S. 68, 69] 1134

Held that it was not the case that the cash was deposited only during the demonetization period. The cash sales were more and in some months less. The assessee had referred to deposit slips and the statement of bank ac-counts. There was no document on the file to show the entire deposits made by the assessee during the demonetized currency. The deposits are tallied with the cash sales in the bank accounts of the assessee. The accounts of the assessee were duly audited and no mismatch of the purchases, sales, and stock-in-trade. Therefore, adding back the remaining amount was not justified. (AY. 2017-18)

Babusona Mondal v. Dy. CIT (2024) 111 ITR 1(SN) (Kol)(Trib.)

S. 69A: Unexplained money-Cash deposits-Demonetization period-Agricultural income-Addition is deleted. [S. 115BBE] 1135

Assessee deposited cash in his bank account. AO made addition as unexplained money under section 69A. Considering the source of income of assessee i. e. agricultural income, cash in hand to extent of Rs. 4 Lacs out of past year savings and out of current agricultural income can safely be held to be available with him for sourcing the cash deposits in his bank account during the demonetization period. There was substance in the claim of assessee that as the government had demonetized the currency, therefore, it was for the said reason that he was compelled to deposit the demonetized currency available with him in his bank account, which, thus, justified the change in trend concerning the cash deposits in his bank account as in comparison to the earlier year. (AY 2017-18) [ITA No. 95/RPR/2024 dated 08/04/2024]

Sunil Solanki v. ITO (Raipur) (Trib) (UR)

1136 **S. 69A: Unexplained money-Survey-Amount received from bank entity of another entity-Share capital-Addition is deleted. [S. 133A]**
Held that the funds received by the assessee from JDS could not be treated as its own funds when the money trail unravelled by the Department itself clearly revealed the ultimate beneficiary to be VMS. There can be no other conclusion drawn from the facts before the Department but that of VMS being the ultimate beneficiary of the transactions, and the assessee only being intermediary in the entire process. No benefit could be derived from the appellate order passed in the case of VMS because that entity had applied for dispute resolution. The addition is not sustainable. Addition is deleted. (AY. 2005-06)
Global Ship Trade P. Ltd. v. ITO (2024)111 ITR 56 (SN)(Ahd)(Trib)

1137 **S. 69A: Unexplained money-Cash deposits-Demonetisation-Statement of director-Addition made on basis of statement of director of RBPL and some CCTV footages obtained from bank-Addition is deleted. [S. 115BE, 132, 132(4A), 153C, 292C, Indian Evidence Act, 1872, 65B]**
Assessee-company is engaged in business of gold bullion/ jewellery. A search under section 132 is carried out at residential premises of partners of JMK Exports and also at residential premises of director of RBPL. In course of search, director of RBPL a private company stated that he was given demonetized cash by one Rajesh Chawala who was one of directors of assessee-company, for depositing in bank accounts of RBPL and thereafter transferring funds to specified bank accounts on commission basis. On basis of said statement and some CCTV footages obtained from bank, Assessing Officer passed assessment order under section 143(3) read with section 153C making addition under section 69A to income of assessee. However, CCTV footage obtained from bank did not contain any conclusive evidence to establish that close relatives and associates of Rajesh Chawala were carrying demonetized cash for depositing in bank account of RBPL. Assessing Officer had not made detailed enquiry and had not brought any conclusive evidence to establish beyond reasonable doubt that it was assessee who had given demonetized cash for depositing in bank accounts of RBPL and Assessing Officer had also not made any enquiry with concerned banks to ascertain source of cash deposits. He had only made enquiry with one bank and on basis of that enquiry, it could not be concluded with certainty that close relatives/associates of Rajesh Chawala were carrying demonetized cash. Deposit slips indicating deposit of cash in bank account of RBPL contained signatures of persons other than close relatives/associates of Rajesh Chawala. On facts, addition under section 69A to income of assessee is directed to be deleted. (AY. 2017-18)
D. L. Heera Bhai Jewellery Arcade (P.) Ltd. v. ACIT (2024) 207 ITD 1 /229 TTJ 1/ 236 DTR 233 (TM) (Delhi) (Trib.)

1138 **S. 69A: Unexplained money-Search-Accumulated cash amount-Recorded in the books of account-Addition is deleted. [S. 132]**
During search action conducted at premises of assessee, cash of certain amount was found and seized. Assessing Officer treated said cash amount as unexplained money

within meaning of section 69A, and accordingly, added same to income of assessee. CIT (A) affirmed the order of the Assessing Officer.
On appeal the Tribunal held that on fact, assessee had been able to demonstrate source of amount seized and accordingly, addition under section 69A is deleted. (AY. 2019-20)
Hemant Samarataji Lohar v. ACIT (2024) 207 ITD 312 (Mum) (Trib.)

S. 69A: Unexplained money-Cash deposits-Demonetization-Partly from fixed deposit maturity and partly from her brother's funds-Addition is deleted-Best judgment assessment-Responded notices-Conditions for invoking Section 144 were not met and therefore, assessment made by Assessing Officer u/s. 144, would not sustain-Addition is deleted. [S. 115BBE, 144] 1139

Assessee, engaged in embroidery and art work for over 40 years, earned below taxable income limit and did not file income returns. During demonetization, assessee deposited certain sum in joint bank accounts. In response to a section 142(1) notice, assessee filed return, explaining deposits as personal savings and cash from her taxpayer brothers. Assessing Officer passed an order under section 144, and made addition under Section 69A r. w. s 115BBE. On appeal, Commissioner (Appeals) upheld half addition, citing insufficient explanation.
On appeal the Tribunal held that deposit of certain sum was from maturity of fixed deposits and additionally, sum added to income of assessee's brother, was same amount deposited in their joint bank account. Entire addition is deleted. Tribunal also held that assessee had filed return of in-come and responded to notice of Assessing Officer, conditions for invoking Section 144 were not met and therefore, assessment made by Assessing Officer u/s. 144, would not sustain. (AY. 2017-18)
Sakina Ahmedali Kantavala v. ITO (2024) 207 ITD 717 (Ahd) (Trib.)

S. 69A: Unexplained money-Cash deposits-Demonetisation-Withdrawals from bank-Cash flow statement-No lacuna in cash flow statement-Addition is deleted. [S. 68, 69] 1140

Tribunal held that the deposits were made by the assessee out of previously withdrawn cash had been duly explained by the assessee before the authorities. The assessee had withdrawn cash as claimed. A cash flow statement for the relevant period was filed before the Assessing Officer. Neither of the authorities below had found any specific lacuna in the cash flow statement of the assessee. The assessee undoubtedly had sufficient cash balances to explain the deposits made. Addition is deleted. (AY. 2017-18)
Gauri Chhabra (Smt) v. ITO (2024)109 ITR 456 (Amritsar) (Trib)

S. 69A: Unexplained money-Cash deposits-Demonetisation-Non-filer-Sundry creditors, gift received from relatives, loan returned, collected and deposited-Addition is affirmed-Applying for Permanent Account Number after demonetisation announced-Jurisdiction transferred to Deputy Commissioner, International Taxation-No infirmity in notice. [S. 68, 69, 143(2)] 1141

Held that the submissions did not contain any evidence in regard to explanation of sundry creditors, gift received from relatives, loan returned, collected and deposited, advance paid in earlier return and deposits made in bank account. Once, there was no evidence and the assessee was a non-filer, the orders of the Commissioner (Appeals)

and the Assessing Officer were to be confirmed. Tribunal also held that the assessee had applied for the permanent account number after demonetisation was announced. The notice under section 143(2) of the Act dated September 22, 2018 was by the jurisdictional Assessing Officer, the Income-tax Officer. The jurisdiction over the assessee was transferred to the Deputy Commissioner, International Taxation, only on September 18, 2019 whereas the assessee filed her return of income only on January 3, 2018. There was no infirmity in the notice dated September 22, 2018 issued by the Income-tax Officer. (AY. 2017-18)

Subaira Parvin Seeni Ibrahim (Ms.) v. Asst. CIT (IT) (2024)109 ITR 72 (SN.) (Chennai) (Trib)

1142 **S. 69A: Unexplained moneys-Search-Cash seized during search-Explained the source of cash-Addition is deleted. [S. 132]**

During the search conducted at premises of assessee, cash amount of certain amount was found and seized, since assessee disclosed source of said cash having been accumulated/received from relatives on various occasions as well as by family members of assessee which assessee had also recorded in his books of account, impugned addition u/s 69A made on account of said amount seized was to be deleted. (AY. 2019-20)

Hemant Samarataji Lohar v. CIT(A) [2024] 163 taxmann.com 292 (SMC) (Mum)(Trib)

1143 **S. 69A: Unexplained money-Search-Gold jewellery-Surrender of income-Gold and silver seized-CBDT Instruction-500 gms-Addition is deleted-Cash of Rs. 1lakh-Addition is deleted. [S. 132(4)]**

During search, gold and silver worth Rs. 1.11 crores was found. Assessee admitted during course of search that out of this valuables worth Rs. 70 lakhs were acquired out of its unaccounted sources of income. Assessing Officer held that assessee had only offered Rs. 41.03 lakhs for taxation in return of income out of surrendered amount made an addition of difference of Rs. 28.96 lakhs as unexplained investment under section 69A. CIT(A) affirmed the addition.

On appeal it was found that total gold jewellery found at time of search was 3592. 896 grams and valuable of silver was 26983 grams. In statement recorded during search assessee submitted that he was not aware about gold ornaments held by his mother, wife and himself, his son and his son's wife which family had received on various family occasions. Assessee submitted that to buy mental peace at time of search he surrendered a sum of Rs. 70 lakhs in respect of these valuables. As per CBDT guideline, total gold holding by 3 married ladies and two male members of 1700 grams was considered as reasonable and assessee had claimed 1450 grams-In respect of silver items/valuation, weight of found items was 26,983 grams out of which 17,400 grams was declared in wealth tax return and balance amount was considered as income. Addition made by Assessing Officer merely on reasons that assessee had at time of recording of statement under section 132(4) admitted lumpsum sum as unexplained investment which was not found correct could not be sustained. Income offered by assessee is justified, and therefore addition is deleted. Assessing Officer had made an addition of Rs. 3 lakhs treating as unexplained cash seized during search and Commissioner (Appeals) had granted relief of only Rs. 1 lakh to assessee considering stature of assessee.

On appeal the Tribunal held that therefore there is no reason to sustain addition of Rs. 2 lakhs in hands of assessee when assessee had disclosed income. (AY. 2017-18)
Anup Agrawal v. CIT (2024) 206 ITD 465 (Jodhpur) (Trib.)

S. 69A: Unexplained money-Cash deposit-Demonetization-Bank account-Registered dealer under VAT Act-Addition is deleted as regards cash deposit and net profit is restricted to 3% of turnover as against 8% estimated by the Assessing Officer. [S. 44AD, 68, 69] 1144

The Assessee is a trader of electrical items. The Assessing Officer made an addition under section 69A in respect of cash deposited in to bank account during demonetization period. He also invoked provision of section 44AD and calculated net profit at rate of 8 per cent on rest amount which was also added back with total income of assessee. Commissioner (Appeals) affirmed order of Assessing Officer.
On appeal the Tribunal held that the assessee is a registered dealer under VAT Act. Turnover declared by assessee was much higher turnover than determined by Assessing Officer in assessment. Further, Assessing Officer without considering earlier years net profit and nature of business had determined NP at rate of 8 per cent. Since cash deposit was part of turnover, addition made by Assessing Officer under section 69A and calculation of net profits was to be restricted to at rate of 3 per cent of turnover amount. (AY. 2017-18)
Mohammad Ashraf War v. ITO (2024) 206 ITD 495 (Amritsar) (Trib.)

S. 69A : Unexplained money-Sale of shares-Long term capital gains-Penny stock-Both purchase and sale transactions were carried out through banking channel and by transfer of shares, long-term capital gain could not be regarded as sham profit and thus addition was not justified. [S. 10(38), 45, 69C] 1145

Assessee purchased the shares of CCL International Ltd at Rs. 40 per share and sold shares of a company at Rs. 526. 47 per share much higher price than purchase price and claimed long-term capital gain as exempt under section 10(38). Assessing Officer treated long-term capital gain to be unaccounted income and invoking provisions of section 69A added same to assessee's income. He also treated a certain amount as unexplained transaction expenses and invoking provisions of section 69C added same to assessee's income. CIT(A) affirmed the addition.
On appeal the Tribunal held that since both purchase and sale transactions were carried out through banking channel and by transfer of shares and an astronomical increase in share price of a company in itself was not a justifiable ground for holding long-term capital gain to be an accommodation entry, long-term capital gain could not be regarded as sham profit and consequently addition under section 69A was not justified. (AY. 2015-16)
Sarika Bindal v. ITO (2024) 205 ITD 49 (Delhi) (Trib.)

S. 69A: Unexplained money-Search-Jewellery-Status of family-Addition is deleted. [S. 132] 1146

During search at residential premises of assessee and his wife, jewellery of 2834.100 gms was found. Assessing Officer after allowing credit of 1300 gms on pro rata basis in light

of CBDT Instruction no. 1916 dated 11-5-1994 on subject, made an addition of certain amount under section 69A on account of excess jewellery found.
On appeal the Tribunal held that in view of decision in case of assessee's wife in *Preeti Singh v. Asstt. CIT (2023) 156 taxmann.com 485 (Delhi)(Trib)* on similar facts, since assessee had shown sufficient income in his return for preceding years which showed wealthy status of assessee and jewellery was received on several occasions from relatives, excess jewellery was very much reasonable. Addition is deleted. (AY. 2021-22)
Chandra Pal v. ACIT (2024) 204 ITD 194 (Delhi) (Trib.)

1147 **S. 69A: Unexplained money-Jewellery-Search-Bank Locker-stree-dhan-Jewellery was gifted to her on various occasions such as marriage, birth of children, etc. -Addition is deleted. [S. 132]**
During search at assessee's residential premises, jewellery of 2834 gms. was found and 227 gms. in bank locker of assessee. Assessing Officer made an addition of value of jewellery found in locker under section 69A on account of unexplained jewellery. Assessee contended that aforesaid jewellery was gifted to her on various occasions such as marriage, birth of children, etc.. High Court in case of *Ashok Chaddha v. ITO (2011) 202 Taxman 395 (Delhi)(HC)* held that collecting jewellery of 906. 900 gms. by a woman in form of stree-dhan or on other occasions was normal. Addition made by Assessing Officer is deleted. (AY. 2021-22)
Preeti Singh v. ACIT (2024) 204 ITD 529 (Delhi) (Trib.)

1148 **S. 69A: Unexplained money-Cash deposit-Demonetization period-Sales made to various parties-Produced copy of bills, sale/VAT return, stock register and VAT assessment order-Order of CIT(A) deleting the addition is affirmed. [S. 68, 69, 115BBE]**
Assessee was asked to explain the source of cash deposits of Rs. 69 lakhs in its bank account during relevant year. It was explained that the assessee had paid VAT on the sales made and reported the same in its books of account. AO dismissed the claim of sales and went on to make addition of income u/s 69A treating the deposits as income from undisclosed sources and computed the tax as per provisions of section 115BBE. The CIT(A) held that the amount of Rs. 69 lakhs is duly recorded in the books of account which were audited under various laws applicable and supported by credible evidence like copies of invoices, stock register maintained on a day to day basis, VAT returns filed from time to time and order of VAT authorities accepting the sales made by the assessee during the year under consideration.
On appeal by Revenue, Tribunal affirmed the order of the CIT(A). (AY. 2017-18)
ITO v. J. K. Wood India (P.) Ltd. [2024] 205 ITD 10/ 109 ITR 47 (SN) (Delhi)(Trib)

1149 **S 69A: Unexplained moneys-Unexplained cash-Sale consideration as per sale agreement in his books of account-Addition is deleted.**
Assessee was engaged in real estate business and he filed an agreement of sale and confirmation letter of purchaser before Assessing Officer for justifying cash deposit in his accounts as sale consideration, AO was not justified in making addition of said deposit under section 69A. Assessing Officer treated cash deposit made by assessee as unexplained cash in hands of assessee and made addition by invoking provisions of

section 69A, since assessee had deposited old currency notes which were kept for petty expenses and obtained new currency notes from bank, cash deposit was to be treated as explained. (AY. 2017-18)
Konathala Nooku Naidu v. ITO [2024] 160 taxmann.com 758 (Visakha) (Trib.)

S. 69B : Amounts of investments not fully disclosed in books of account –Undisclosed investments-Order of Tribunal deleting the addition is affirmed. [S. 133(6), 147, 148, 250(4), 260A] 1150

Assessing Officer had issued notice under section 148 having received in-formation with regard to time deposits made by assessee, a US resident involved in retail business in USA, with Canara Bank and addition was made under section 69B based on unexplained investment in time deposits. Commissioner (Appeals) carried out an inquiry in matter by exercising his powers under section 250(4) and evidence was sought with regard to remittances made to NRE Account maintained with Canara Bank and having discovered that actual time deposits made in Assessment year 2012-13 were of lesser amount and difference in two amounts was wrongly quoted by Canara Bank, and as regards balance sum, since source of remittances was income earned by assessee in USA, he had deleted entire addition. Tribunal affirmed the Order of the CIT(A).
On appeal the Court held that since Commissioner (Appeals) had exercised his powers under section 250(4) which was co-equal to that of Assessing Officer and it also took note of fact that notice was issued to concerned branch of Canara Bank under section 133(6) and it was only after information was received from Canara Bank and material evidence furnished by assessee, that addition was deleted. Order of Tribunal is affirmed. (AY. 2012-13)
CIT (IT) v. Hotchand Techchand Punjabi (2024) 297 Taxman 147 (Delhi)(HC)

S. 69B: Amounts of investments not fully disclosed in books of account –Alleged on money-Land-Agreement to sale-Agreement is not acted upon-Opportunity of cross examination is not granted-Addition is deleted-Reassessment-Incorrect facts-Reassessment is quashed. [S. 133A, 147, 148] 1151

Held by Tribunal that the names of the assessee and her husband neither appeared in the agreement for sale nor they appended their signatures in the said document. Said document namely, the agreement of sale bears signatures of three persons out of six persons in the first two pages and does not bear the signatures of witnesses and the sellers. Such an incomplete document cannot have any evidentiary value in the eye of law and cannot be relied upon while making addition. The assessee was never allowed to cross examine the seller of the land. Addition is deleted. Tribunal also held that the assessee was never a party to the deal as per the alleged agreement for sale, no addition can be made for alleged interest. The Tribunal also held that reassessment has been done due to incorrect recording of facts hence the reassessment also quashed. (AY. 2011-12)
ACIT v. Bhavnaben Bhovanbhai Rangani (Smt)(2024) 162 taxmann.com 392 / 228 TTJ 21 (Rajkot)(Trib)
Maulesh Dayabhai Ukani v. ACIT (2024) 162 taxmann.com 392 / 228 TTJ 21 (Rajkot)(Trib)

1152 **S. 69B: Amounts of investments not fully disclosed in books of account –Search-Gold bullion-Received though will-Deletion of addition by CIT(A) is affirmed. [S. 132(4), 153A]**

Tribunal held that the Assessee has explained source of the gold, bullion which was received as per will of grand mother. The document was notarized. Order of CIT(A) deleting the addition is affirmed. (AY. 2019-20)

ACIT v. Gaurav Kumar Agrawal (2024) 168 taxmann.com 260/ 228 TTJ 675 (Raipur)(Trib)

1153 **S. 69B: Amounts of investments not fully disclosed in books of account-Excess stock-Discrepancy in cost of building-Cash expenditure-Income disclosed in the course of survey-Tax cannot be levied by applying the deeming provision. [S. 40A(3), 115BBE, 133A]**

The ITAT held that the Revenue did not point out that the excess stock has any nexus with any other receipts other than the business being carried on by the assessee. There was thus a clear nexus of stock physically so found with the stock in which the assessee regularly dealt in and recorded in the books of account with the business of the assessee and the difference in value of the stock so found was clearly in the nature of business income. It was therefore held that the income so surrendered cannot be brought to tax under the deeming provisions of section 69B and the same had to be assessed to tax under the head "business income". In absence of deeming provisions, the question of application of section 115BBE did not arise and normal tax rate would apply. The ITAT also held that there was no dispute that certain renovation and extension to the building was carried out by the assessee during the year, however, as far as the quantum of expenditure on renovation and extension was concerned, no material/documentation was found during the course of survey and the estimated amount of expenditure has been taken based on the statement of the assessee recorded at the time of survey. Even during the course of assessment proceedings, the AO further erred in not referring the matter to the valuation officer and in determining the amount of expenditure based on physical examination and applying specified rates. Therefore, the fact that the assessee had honoured the surrender so made in spite of the fact that there was no corroborative material against the assessee can't be held against the assessee and more so, cannot form the basis for invocation of deeming provisions which was done in the present case as the conditions stated therein were not satisfied. Accordingly, the ITAT directed the AO to tax the surrendered income at normal rates as applicable to the business income. The ITAT further held that once the assessee had surrendered the amount on account of cost of extension, renovation and the same was brought in the books of account, the same formed part of block of the building and the assessee was eligible for claim of depreciation thereon. As regards cash expenditure there was no finding that cash expenditure was found, which was not ac-counted for and therefore, it was not clear as to how the deeming provisions were invoked in this regard. Where the expenditure was held to be disallowable in terms of section 40A(3) which would mean that certain expenditure was incurred, accounted for in books of accounts and it was found to be incurred in cash in violation of section 40A(3), the question of unexplained expenditure or unaccounted expenditure did not arise for consideration. Hence, the action of the AO in invoking the deeming provisions in this regard were set aside. (AY. 2018-19)

Gurinder Makkar v. Dy. CIT (2024) 111 ITR 274 (Chd)(Trib.)

S. 69B: Amounts of investments not fully disclosed in books of account-Excess stock-Survey-Deeming provision would not apply-Assessable at normal rates as business income. [S. 115BBE,133A] 1154

Held that the income surrendered on account of investment in excess stock in the course of survey could not be brought to tax under the deeming provisions of section 69B of the Act and had to be assessed to tax under the head "Business income". The question of the application of section 115BBE of the Act did not arise and the normal tax rate applied. (AY. 2018-19)

A. P. Knit Fab v. Dy. CIT (2024) 111 ITR46 (Chad)(Trib)

S. 69B: Amounts of investments not fully disclosed in books of account –Statement in the course of survey-No evidentiary value-Addition is deleted [S. 115BBE, 131, 133A] 1155

Hon'ble Tribunal held that it is a settled proposition of law that the statement recorded under Section 131 during the course of survey has no evidentiary value in the absence of any corroborative evidence on record vide *CIT v. S. Khader Khan 300 ITR 157 (Mad.).* The Officer is not authorised to administer the oath and to take sworn statement which alone has evidentiary value as contemplated under law and such statement so recorded can be used in evidence under the Act. Therefore, the statement of one of the partners of the assessee firm without any corroborative evidence for the purpose of invoking the deeming provisions of Section 69B of the Act. Hon'ble Tribunal further held that there was a clear affirmation that land and building was purchased in the year 2014 and was reflected in the books of account. Further, in order to buy peace of mind and avoid litigation, an amount of Rs. 45 lakhs was offered on account of addition made to factory building and source whereof has been stated to be out of business income and the deeming provisions, therefore, cannot be invoked in the instant case. Hon'ble Tribunal further held that provisions of Section 69B read with Section 115BBE cannot be invoked in the instant case. (AY. 2018-19)

DDK Spinning Mills v. Dy. CIT [2024] 109 ITR 619 (Chd)(Trib)

S. 69B: Amounts of investments not fully disclosed in books of account-Stock not fully disclosed in books of account-Survey-Surrendered in the course of survey-Business income-Surrendered income could not be brought to tax under deeming provisions-Addition is deleted. [S. 115BBE, 133A] 1156

Where AO treated the amount surrendered by the assessee during the course of the survey as excess stock under section 69B, since the income surrendered by the assessee was from business operations and Revenue had not pointed out that excess stock had any nexus with any other receipts other than business being carried on by the assessee, the same could not be brought to tax under deeming provisions of section 69B read with section 11BBE. (AY. 2019-20)

Montu Shallu Knitwears v. Dy. CIT [2024] 109 ITR 1 (Chd)(Trib)

1157 **S. 69C: Unexplained expenditure-Search and seizure-Duplicate account-Yield in various years-Finding reversed relying on statement-Order of Tribunal is restored-Miscellaneous application against the order of Supreme Court is dismissed on account of delay and also on merits. [S. 132, 143(3), Art. 136]**

Allowing the appeal of the Revenue the Court held that the High Court had not considered the conduct of the assessee, which had been considered in detail by the Tribunal, nor the findings of the Tribunal that during search in the case of the assessee and its group concern, duplicate cash book, ledger and other books showing unaccounted manufacturing and trading by the assessee in diamonds were found, that huge additions were made in the case of assessee's group in the block assessment on the basis thereof and that the assessee was maintaining books of account outside the regular books. The order passed by the Tribunal and the assessment order were restored. Miscellaneous application filed against order of Supreme Court is dismissed on account of delay as also on merits. (AY. 2000-01)

ACIT v. Kantilal Exports Surat (2024) 300 Taxman 99 (SC)

Editorial : ACIT v. Kantilal Exports Surat (2023) 293 Taxman 531/ 454 ITR 112 /332 CTR 610/ 225 DTR 357 (SC) M. Kantilal Exports v. ACIT (2011) 330 ITR 185 (Guj) (HC), reversed.

1158 **S. 69C: Unexplained expenditure-Bogus purchases-Sundry creditors-Only profit element embedded in credits can be taxed-Restricted to 25% of element of profit-Order of High Court is affirmed-SLP of Revenue is dismissed. [S. 37, 69A, 143(3), Art. 136]**

The Assessing Officer took the view that trade credits and creditor expenses were not genuine and that those creditors were merely book entries and had already been paid off in cash, and treated the sum as income of the assessee under section 69A of the Income-tax Act, 1961. The Commissioner (Appeals) restricted the additions to the profit element of 25 per cent. and the Tribunal affirmed this.

On appeal by the Department the High Court held that the Commissioner (Appeals) and the Tribunal had correctly limited the additions made by the Assessing Officer to 25 per cent. The Supreme Court dismissed the Special Leave Petition filed by Revenue.

PCIT v. Nandkishor Hulaschand Jalan (2024) 461 ITR 338 /161 taxmann.com 81 (SC)

Editorial: PCIT v. Nandkishor Hulaschand Jalan (2019) 412 ITR 357 (Guj)(HC)

1159 **S. 69C: Unexplained expenditure-Search-Diary-Unexplained general expenses-Legal expenses-Order of Tribunal deleting the addition is affirmed-No substantial question of law. [S. 132, 153A, 260A]**

In the course of search a diary was seized. The Assessing Officer made additions on account of unexplained general expenses and legal expenses. CIT(A) deleted the addition. Tribunal affirmed the order of the CIT(A).

On appeal the Court held that since Tribunal had recorded findings of fact that materials on record did not justify such additions made by Assessing Officer, no substantial question of law arose for consideration. (AY. 2010-11)

PCIT v. Timblo (P.) Ltd. (2024) 300 Taxman 343 (Bom.)(HC)

S. 69C: Unexplained expenditure –Bogus purchases –Trading in resign and chemicals on whole sale basis-Information from Sales tax Department-Order of Tribunal restricting the addition to 12.5 % of gross profit is affirmed-No substantial question of law. [S. 133(6), 145(3), 260A] 1160

The assessee is engaged in the business of trading in resins and chemicals. The Assessing Officer held that had purchases from six parties who were declared by the Sales Tax Department as ingenuine dealers opined that the purchases in question did not have nexus with the corresponding sales and accordingly added the entire amount of purchases to the assessee's income under section 69C on the ground that there being unexplained payments qua the purchases in question. The Commissioner (Appeals) estimated the gross profit at 12.5 per cent on the purchases made by the assessee. As the assessee had shown gross profit at 4.74 per cent in the assessment year in question, the Commissioner (Appeals) reduced the same from 12.5 per cent and confirmed the addition to the extent of 7.76 per cent. The Tribunal, on appeals filed by both the revenue and assessee, ob-served that the Commissioner (Appeals) had rightly estimated the profit in regard to the purchases at 12.5 per cent. However, he was not correct in reducing the gross profit already returned by the assessee at 4.74 per cent out of 12.5 per cent for the reason that the gross profit returned by the assessee related to the sales made by it and did not have link to the purchases for which it might have procured bills by making savings in VAT, etc. the Tribunal partly allowed the appeal of the revenue and directed the Assessing Officer to estimate the income at 12.5 per cent on the purchases so made. It rejected the assessee's challenge to the order passed by the Commissioner (Appeals).

On appeal the Court held that in absence of a cohesive and coordinated approach of Assessing Officer with Sales Tax Authorities, it would be difficult to come to a concrete conclusion in regard to such purchase being bogus merely on basis of general information so as to discard such expenditure and add same to assessee's income. Order of Tribunal is affirmed. No substantial question of law arose out of order of Tribunal. (AY. 2009-10, 2010-11)

PCIT v. SVD Resins & Plastics (P.) Ltd. (2024) 300 Taxman 503/ (2051) 474 ITR 151 (Bom.)(HC)

S. 69C: Unexplained expenditure-Bogus purchases-Accommodation entries-Restriction of disallowance to 12. 5 Per Cent. by Commissioner (Appeals) reduced to Six Per Cent. by Tribunal-Order of Tribunal is affirmed-No substantial question of law. [S. 260A] 1161

Held, dismissing the appeal of the revenue the Court held that the Tribunal had duly analysed the facts before it had reduced the disallowance to six per cent. from 12.5 per cent. as restricted by the Commissioner (Appeals) and therefore, no interference was called for in its findings and order. In the judgment in *PCIT v. Surya Impex (2023) 451 ITR 395 (Guj)(HC))* wherein, on the issue of accommodation entries provided by the same group alleged to have provided accommodation entry to the assessee, the court had held in favour of the assessee. The questions of law involved were of similar nature and were in the context of similar facts involving the same group. No other question of law arose. (AY. 2007-08)

PCIT v. Pankaj K. Choudhary (2024) 466 ITR 348 (Guj)(HC)

1162 **S. 69C: Unexplained expenditure-Bogus purchases-Tribunal confirmed 10% of alleged bogus purchases-On appeal High Court deleted the 10% of alleged bogus purchases confirmed by the Tribunal. [S. 260A]**

The Assessing Officer disallowed the 100% of alleged bogus purchases. On appeal the CIT(A) accepted the sales tax and VAT Audit report restricted to 10 % of alleged bogus purchases. On appeal the Tribunal affirmed the order of the CIT(A) on the ground that the goods were purchased from the grey market.

On appeal the Court held that the sales were not in doubt. Court also held that apart from the inputs being received from the investigation wing, there is nothing concrete in the material on record that was used to confront the Appellant. If the counterparties in these purchases could not be produced years later, simply adopting a 10% margin for disallowance, without any cogent or convincing evidence, is unreasonable and arbitrary. It is repugnant for the ITAT to uphold such an addition of 10% of the allegedly bogus purchases to the income of the Appellant, despite returning a firm finding that the AO Order was untenable not being backed by cogent and convincing evidence. Accordingly, the Honourable High Court set aside the order of the Tribunal and allowed the appeals of the assessee.

Relied on *CIT v. Nikunj Eximp Enterprises Pvt. Ltd. (2015) 372 ITR 319 (Bom)(HC), PCIT v. SVD Resins & Plastics (P.) Ltd. [2024] 166 taxmann.com 242 (Bom)(HC), PCIT v. Shapoorji Pallonji and Co. Ltd [2020] 117 taxmann.com 625 (Bom) (HC) (SLP dismissed, PCIT v. Shapoorji Pallonji and Co. Ltd. [2022] 288 Taxman 661(SC)*. (AY. 2009-10, 2010-11, 2011-12) *Ashok Kumar Rungta v. ITO (2024) 301 Taxman 580/2025) 342 CTR 103/474 ITR 160 (Bom)(HC)*

1163 **S. 69C: Unexplained expenditure-Bogus purchases-Statement of director-No independent enquiry was made-Deletion of addition by the Tribunal is affirmed-No substantial question of law. [S. 132, 143(3), 260A]**

Assessee is engaged in manufacture of high-pressure seamless cylinders. Pursuant to search and seizure operations of group concerns of assessee, Assessing Officer on basis of statement made by a director of assessee held that assessee-company siphoned off cash by issuing cheques against bogus capital expenses debited in accounts of assessee-company. Accordingly, he made an addition on account of bogus purchases which was con-firmed by Commissioner (Appeals). The Tribunal held that capitalization could not be denied to assessee merely on a statement given by director of assessee, without adducing evidence of other necessary parties. It was found that assessee had produced certain documents including ledger ex-tracts of parties, confirmation from parties, bank statements and certificate from registered valuer showing construction of a building indicating pro-curement of steel for which said payments were made by cheque. Capitalization was denied solely based on statement made by only party recorded under section 131. No enquiry in this regard was made and no evidence generally was made available by Assessing Officer. Addition was deleted.

On appeal the Court held that since entire order of Assessing Officer was based merely on statement of Director of assessee without summoning or adducing additional/ supplementary evidence of any other person corroborating allegation regarding bogus payments made by assessee, Tribunal was justified in deleting the addition.

PCIT (Central) v. Nitin Cylinders Ltd. (2024) 298 Taxman 33 (Bom.)(HC)

S. 69C: Unexplained expenditure-Bogus purchases-Order of Tribunal restricting 8% of purchases is affirmed. [S. 260A] 1164

Assessing Officer disallowed entire purchases, considering it unexplained expenditure under section 69C of the Act. On appeal, Commissioner (Appeals) held that since Assessing Officer did not doubt genuineness of payments made through banking channels and accepted total sales, entire purchases couldn't be disallowed. Instead, only profit element was considered, restricting unexplained expenditure to 8 per cent of total purchases. Tribunal accepted factual finding recorded by Commissioner (Appeals). On appeal dismissing the appeal of the Revenue the Court held that since both Commissioner (Appeals) and Tribunal concluded, based on facts, that 8 per cent was a reasonable figure, there was no justification for interfering with orders of lower authorities. (AY. 2011-12)

PCIT v. Hitesh Mody (HUF) (2024) 298 Taxman 162 (Bom.)(HC)

S. 69C: Unexplained expenditure-Unrecorded purchases from foreign supplier-No supporting documents-Addition is affirmed. 1165

Held that in the absence of any supporting documents, assessee's explanation that payment was not made towards purchases of imported items as the goods were found to be defective and the said goods were to be returned to the supplier cannot be accepted; assessees having not recorded the purchases of said imported furniture in his/her books of accounts, addition is upheld. (AY. 2016-17)

Moureen Camara (Mrs.) v. NFAC (2024) 231 TTJ 244 / 240 DTR 305 (Panaji)(Trib)
Melwyn Camara v. NFAC (2024) 231 TTJ 244 / 240 DTR 305 (Panaji)(Trib)

S. 69C: Unexplained expenditure-Alleged bogus purchases-Income from undisclosed sources-No justification in making addition at the rate of 12. 5 percent. 1166

AO made addition at the rate of 12.5 per cent on alleged bogus purchases. CIT(A) has accepted that purchases were genuine (though made from unverifiable sources) because goods manufactured from such purchases were accepted by the AO and has also given his finding that the rates of pro-curement of such purchases by the assessee are either at par or even be-low the market rate on which the assessee has procured such alleged purchases. Accordingly, CIT(A) accepted the books of account of the assessee and calculated the profit @ 5.94 per cent, which is the GP rate declared by the assessee. No justification in making addition. (AY. 2021-22)

Prime Steel Industries (P) Ltd. v. Dy. CIT (2024) 232 TTJ 1026 (Chd)(Trib)

S. 69C: Unexplained expenditure-Bogus purchases-Disallowance is restricted to 10 percent of alleged bogus purchases-Reassessment is valid-Sanction-Sanction granted by Principal CIT is valid. [S. 147, 148, 151] 1167

Tribunal held that the sanction by Principal CIT is valid and reassessment is valid. As regards the addition income is estimated at 10% of alleged bogus purchases. (AY. 2011-12)

Leelaben Kantilal Parekh v. ITO (2024) 227 TTJ 257 (SMC) (Mum)(Trib)

1168 **S. 69C: Unexplained expenditure-Information from Investigation Wing-Purchase transaction is duly explained with supporting evidences-Addition is deleted-Reassessment issue is left open. [S. 147, 148]**

Held that the assessee has provided bill-wise details of each transaction giving date of bill, quantity, amount, toll receipt number, lorry receipt, waybill, Form Vat-58 Number and truck number, vouchers, vendor's ledger account and ledger confirmation, and transporter's confirmation about transport of goods. Transporter Provided consignment number, bill number as well as quantity of consignment. Addition is deleted. Issue of reassessment is left open. (AY. 2012-13)

Jindal Drugs P. Ltd. v. ACIT (2024)116 ITR 65 (SN)(Mum)(Trib)

1169 **S. 69C: Unexplained expenditure-Sale consideration-Agricultural land-No material with the department-Addition is deleted.**

Assessee is an agriculturist who purchased 6 acres of agricultural land for certain sale consideration. Assessing Officer alleged that assessee paid cash of Rs. 78 lakhs to seller over and above sale consideration mentioned in sale deed. The AO made addition. CIT(A) affirmed the order of the AO.

On appeal the Tribunal held that there was no documentary evidence unearthed by Assessing Officer which could show that assessee had paid huge amount over and above sale consideration mentioned in both sale deeds and moreover if testimony of one witness was discredited, there was no material with department on basis of which it could justify its action, as un-substantiated statement of witness was only basis of making addition. Addition is deleted. (AY. 2010-11)

Shanmugasundaram v. ITO (2024) 209 ITD 158 (Chennai) (Trib.)

1170 **S. 69C: Unexplained expenditure-Bogus purchases-Sales accepted-Disallowance of purchases are deleted. [S. 37(1)]**

Held, that the additions made by the Assessing Officer were not only erroneous but was also contrary to the directions of the Dispute Resolution Panel. While the Assessing Officer had cast doubt on propriety of purchases of fabric made from Sun Gold Trade P. Ltd (STPL) on the basis of assessment order passed in the hands of the supplier, the Assessing Officer had accepted the corresponding sale transactions. The exclusion of purchases from the trading results was not permissible without corresponding exclusion of the sales in such trading activity for arriving at a fair and balanced view. The action of the Assessing Officer patently was contrary to the rudimentary principles of accounting. Addition is deleted. (AY. 2017-18)

Bhartiya International Ltd. v. Dy. CIT (2024) 112 ITR 207/227 TTJ 897 / 158 taxmann.com 239 (Delhi)(Trib)

1171 **S. 69C: Unexplained expenditure-Income from undisclosed Sources-Survey-Accommodation entries-Bogus purchases-Addition to the extent of 12.5 Per Cent is affirmed-Reassessment is affirmed. [S. 133(6) 139, 147, 148]**

Tribunal held on merit estimate of addition 12. 5 Per cent estimated by the CIT(A)is affirmed. Reassessment is affirmed. (AY. 2010-11)

Aishwarya Publication P. Ltd. v. ITO (2024)112 ITR 14 (SN)(Mum)(Trib)

S. 69C: Unexplained expenditure-Bogus purchases-Trading in Iron and steel scrap-Sales not disputed-Regular transaction with supplier-Ledger confirmation of supplier-Order of CIT(A) deleting the addition is affirmed. [S. 143(3)] 1172

Dismissing the appeal of the Revenue the Tribunal held that the ledger confirmation of supplier, showing payment made, revenue had not disputed sales made by assessee. The assessee had regular transactions with supplier in respect of its business of trading in iron and steel. Identity of supplier had not been doubted by revenue and only genuineness and creditworthiness of purchases are disputed by Revenue. Assessee had furnished sufficient documents to prove its financial credit worthiness. Order of CIT(A) is affirmed. (AY. 2016-17)

ITO v. Hari Steel Industries Ltd. (2024)112 ITR 26 (SN)(Mum)(Trib)

S. 69C: Unexplained expenditure-Diary-Cash expenses-Absence of specific details in the affidavit-Addition is affirmed. [S. 132] 1173

During search, a diary was seized from office of assessee which contained entries of substantial amount of cash expenses. Assessee was requested to provide explanation with respect to cash expenses during year under consideration. The assessee has filed the affidavit of Mr. Rohit Sharma who affirmed that the diary belong to him and written by him. The Assessing Officer held that the amount of cash expenses was unexplained and made addition u/s 69C of the Act. CIT(A) affirmed the addition.

On appeal the Tribunal held that contents of affidavit did not properly ex-plain entries as names of person paying amount and expenses paid were vaguely mentioned, names of relatives of assessee were also mentioned. In absence of specific details and other supporting documents, affidavit of Rohit Sharma is rejected and addition is affirmed. (AY. 2015-16)

Kailash Gahlot v. DCIT (2024) 208 ITD 25 / 113 ITR 62 (SN) (Delhi) (Trib.)

S. 69C: Unexplained expenditure-Expenses paid regarding purchase of land prior to withdrawal from bank-Addition as alleged payment out side the books of account-Pending litigation-Advances paid was shown as current liabilities-Addition is not justified. [S. 69, 69B, 153A] 1174

Held that since Paul Brothers could not hand over possession of his land to the assessee due to ongoing legal disputes, the assessee, on signing of the memorandum of understanding, had made only an advance payment with an agreement to pay the remaining consideration after final settlement of the disputes. The amount was paid by Suresh Kumar Agarwal, Yogendra Kumar Agarwal, Deepak Kumar Sanwaria and Vivek Agarwal out of their personal sources, which they had admitted to being additional income in their respective returns of income filed in various assessment years. The payment made by Yogendra Kumar Agarwal was added in his hands on substantive basis per assessment order framed under section 153A. The payment could not be once again considered in the hands of the assessee-company. Therefore, the order of the Commissioner (Appeals) in confirming the addition on account of unexplained cash credit could not be sustained as the amount stood offered to tax in the payers' individual assessments. Accordingly, the order of the Commissioner (Appeals) was set aside with direction to the Assessing Officer to delete the addition. (AY. 2011-12 to 2014-15)

Bhavesh Commotrade P. Ltd. v Dy. CIT (2024) 110 ITR 180 / 231 TTJ 641 (Ranchi)(Trib)
ACIT v. Suresh Kumar Agarwal (2024)) 110 ITR 180/ 231 TTJ 641 (Ranchi)(Trib)

1175 **S. 69C: Unexplained expenditure-Bogus purchases-filed details of purchases made and corresponding quantity of sales made-Entire purchases could not have been added to income-Only profit element can be taxed.**

Assessing Officer treated entire purchases made by assessee from two par-ties as bogus purchases and added amount to assessee's income invoking section 69C. CIT(A) affirmed the order of the AO.

On appeal the Tribunal held that since assessee had filed details of purchases made from aforesaid parties and corresponding quantity of sales made, entire purchases could not have been added. Further source of purchases was from books, addition could not have been made under section 69C. Only gross profit rate of 3 per cent was to be applied over and above gross profit rate declared by assessee on bogus purchases. (AY. 2012-13)

Heena Gems v. ACIT (2024) 208 ITD 481/114 ITR 30(SN) (Mum) (Trib.)

1176 **S. 69C: Unexplained expenditure-Unexplained investment-Bogus purchases-Accommodation entries-Sales accepted-Addition is restricted to gross profit of 6.19%. [S. 28(i), 69, 143]**

Assessing Officer received information from Investigation Wing that assessee was one of beneficiaries of accommodation entries for bogus purchase bills. He made addition to income of assessee on account of entire amount of bogus purchases. CIT(A) affirmed the addition.

On appeal the Tribunal held that the entire sales had been accepted and only one purchase had been doubted. Gross profit rate as shown by assessee in its audit report Form 3CD was 6.19 per cent. Addition is restrict-ed to gross profit rate on said purchase. (AY. 2012-13)

Mahir Diamonds v. ITO (2024) 208 ITD 626/114 ITR 80(SN) (Mum) (Trib.)

1177 **S. 69C: Unexplained expenditure-Composite trading and profit and loss account-Sales accepted-Failure to response to notices issued by Revenue-Ad-hoc disallowance of purchase of Milk is deleted.**

Assessing Officer held that assessee showed 13 sundry creditors in respect of supply of milk to assessee-company. However, above creditors made sales of milk to assessee-company but barring few creditors, no payment was made to any of creditors by assessee-company throughout the year. In order to verify genuineness of transactions letters were issued by Assessing Officer to above creditors at addresses as furnished by assessee. However, letters issued were received back with postal remarks that ad-dresses were incomplete. Since assessee eventually failed to produce any of milk vendors, 20 per cent of expenditure incurred for purchase of milk from above named milk vendors is disallowed and added back by Assessing Officer to income of assessee. CIT(A) affirmed the disallowance. On appeal the Tribunal held that since assessee had maintained a composite trading and profit and loss account for current year and all expenses of nature had been debited and had not been doubted, there was no justification to doubt purchases by accepting sales and income. (AY. 2010-11)

Madura Biotech (P.) Ltd. v. DCIT (2024) 208 ITD 699 (Delhi) (Trib.)

S. 69C: Unexplained expenditure-Bogus purchases-Not doubted sales-Estimate of income at 12.5 Per Cent. of bogus purchases is affirmed-As regards special deduction-Industrial undertaking-Matter is remanded. [S. 80IC] 1178

Held that the assessee had made bogus purchases and in turn it provided savings to the assessee in non-payment of State taxes. The Assessing Officer had not doubted the sales and hence the order of the Commissioner (Appeals) on this disputed issue was to be set aside and the Assessing Officer was directed to estimate the income at 12. 5 per cent on unapproved/bogus purchases. As regards special deduction in respect industrial undertaking, matter is remanded. (AY. 2010-11).

Aczet P. Ltd. v. ACIT (2024)110 ITR 44 (SN)(Mum) (Trib)

S. 69C: Unexplained expenditure-The commission paid on bogus purchases and sales is covered by the gross profit already disclosed and offered to tax-No separate addition can be made. [S. 132, 133 of ITA, 1961] 1179

A search operation was conducted at the business premises of the Assessee. The assessee made bogus purchases and sales through a broker and paid cash commission at a certain rate on the total amount of these transactions. The Assessing Officer (AO) treated the cash commission paid as unexplained expenditure under Section 69C and made additions to the income of the assessee as according to him, the assessee did not provide proof of the cash commission rate claimed. The assessee contended that it had already disclosed and offered to tax the gross profit on bogus sales, which was accounted for in its books. The commission payment to the broker was covered by the quantum of gross profit already offered to tax. The assessee argued that making a separate addition for the commission would result in double taxation. The Hon'ble Tribunal held that the gross profit disclosed by the assessee covered the commission for procuring bogus purchases and sales. That since the commission was covered by the gross profit already offered to tax, no separate addition should be made. The Hon'ble Tribunal thereby directed deletion of the adjustment made, allowing the ground of appeal in favor of the assessee. (AY 2013-14 to 2018-19)

Seo Lehenga House v. DCIT, (2024) 111 ITR 681 (Chd)(Trib.)

S. 69C: Unexplained expenditure-Income from undisclosed sources-bogus purchases-An addition of four percent of bogus purchases is held to be appropriate. [S. 68] 1180

Held that the assessee was unable to prove the genuineness of the purchase concerning the parties. However, when the AO asked the assessee to show the quantity and quality-wise details of the purchase and their corresponding consumption and sales, the assessee produced them. No infirmity had been found in those details. The assessee had purchased material from party A and procured bogus bills of the same material from party B. The overall facts and circumstances that there were other expenses and credit of taxes and duties required to be added, an addition of four percent of bogus purchases in the hands of the assessee would be appropriate. (AY. 2019-20)

Bengal Mill Stores P. Ltd. v. Dy. CIT (2024) 111 ITR 81(SN) (Mum)(Trib.)

1181 **S. 69C: Unexplained expenditure-Bogus purchases-Purchases are recorded in the books and corresponding sales are accepted-The entire amount of alleged bogus purchases should not be added to income-Gross profit rate of 12.5% on such purchases is reasonable. [S. 133(6), 147]**

The Hon'ble Tribunal upheld the decision of the Commissioner (Appeals), who had restricted the addition by estimating a gross profit (GP) rate of 12.5% on the total bogus purchases. The Hon'ble Tribunal reasoned that since the source of purchases had been debited in the books of account and cor-responding sales were accepted, it could not be held that these purchases were outside the books. That at most, it could be a case of purchases made from hawala dealers to inflate costs and suppress the GP rate. The Hon'ble Tribunal dismissed the Revenue's appeal, affirming that a GP rate of 12.5% was reasonable in such cases, following the principle laid down by the Bombay High Court in *Pr. CIT v. Vishwashakti Construction(2023) 454 ITR 448 (Bom)(HC).* (AY. 2009-10)

ITO v. Rajesh Amulakhrai Sanghvi (2024) 111 ITR 500 (Mum)(Trib.)

1182 **S. 69C: Unexplained expenditure-Commission-Bogus purchases and sales-Gross profit offered to tax-No separate addition can be made.**

The ITAT held that the assessee had been contending from the assessment proceedings that it has disclosed and offered to tax gross profit on bogus sales which has been accounted for in its books of accounts and the commission payment to the broker is therefore duly covered by the quantum of gross profit already offered to tax. The factum thereof has not been disputed by the revenue and at the same time, both the lower authorities have failed to give due effect to the same. On perusal of records, it is noted that the assessee has disclosed gross profit at the rate of 1. 60 per cent on bogus sales and therefore, the commission for procuring the bogus purchase and sale so determined by the AO stood covered by the said gross profit and there cannot be any separate addition in this regard. Therefore, the addition sustained by the CIT(A) was directed to be deleted. (AY. 2013-14, 2015-16, 2016-17, 2017-18, 2018-19)

CIT (Dy.) v. Seo Lehenga House (2024) 111 ITR 681 (Chd)(Trib.)

1183 **S. 69C: Unexplained expenditure-Income from undisclosed sources-Bogus purchases-Accommodation entries-Information from Sales Tax Department-Addition at 12.5 Per cent. of bogus purchases is held to be justified.**

Dismissing the appeals of the Revenue the Tribunal held that though the assessee had failed to substantiate the identity of the parties before the Assessing Officer, the entire transactions were made through banking channels. The sales were also executed depending on the purchase of materials. The purchases and sales were interlinked transaction. The Assessing Officer had not rejected the sales of the assessee. The calculation of addition at 12.5 per cent of the bogus purchases is acceptable. (AY. 2011-12)

ITO v. Chandresh Chhaganlal Mehta (2024)111 ITR 93 (SN)(Mum)(Trib)

ITO v. Mustafa Zainuddin Nalawala (2024)111 ITR 93 (SN)(Mum)(Trib)

S. 69C: Unexplained expenditure-Purchases-Submitted addresses, GST No. PAN No., amount of purchases (Net of VAT), bill/voucher/challan issued by parties mentioned details of assessee, excise duty paid, details of truck/challan no., order no. etc. -Payment were made through cheques-Notice sent under section 133(6) through ITBA portal was not responded-Purchases cannot be treated as non-genuine merely because the parties have not responded to notice sent under section 133(6)- Addition is deleted. [S. 133(6)] 1184

Assessee is engaged in business of manufacturing and trading of petro-chemicals. It had purchased goods from 10 parties. Assessing Officer issued show cause notice under section 133(6) on ITBA portal to four parties based in J&K to verify genuineness of purchases and since no reply was received from these parties, he made addition of entire purchases made by assessee. CIT(A) affirmed the order of the AO.

On appeal the Tribunal held that the assessee had given addresses, GST No. PAN No., amount of purchases (Net of VAT), etc. -Bill/voucher/challan issued by parties mentioned details of assessee, excise duty paid, details of truck/challan no., order no. etc. from all parties. All items purchased were subjected to excise duty and assessee had given entire details of parties and their ledger account and that payment had been made through cheques. Since assessee had submitted all these details, addition made by Assessing Officer treating entire purchase as non-genuine simply because notice sent under section 133(6) through ITBA portal was not responded ignoring other evidences and details available on record was to be deleted. (AY. 2010-11, 2011-12, 2017-18)

Isagro (Asia) Agrochemicals (P.) Ltd. v. DCIT (2024) 206 ITD 171 (Mum) (Trib.)

S. 69C: Unexplained expenditure-Sale transaction-Purchaser confirmed the transaction-Addition is deleted. [S. 132(4)] 1185

AO held that the assessee had made cash payments and source remained unexplained hence made under section 69C of the Act. During course of assessment proceedings the assessee explained that cash was actually 10lakh which was collected and received by Deepak thrice and the final time through Rahish Pal Singh. The assessee was asked to discharge his onus of explanation, nature and source of transaction. The ITAT held that the assessee had discharged his onus of explaining the nature and source of transaction during search proceedings. The court held that there is no justification on facts and in law for impugned additions which directed the ld. AO to delete. The appeal of assessee is allowed. (AY. 2020-21)

Chandra Pal v. ACIT (2024) 204 ITD 565 (Delhi) (Trib)

S. 70: Set off of loss-One source against income from another source-Same head of income-Loss incurred on sale of shares on Stock exchange platform-Securities transaction tax paid-Eligible to be set off against long-term capital gains earned from sale of unlisted shares. [S. 10(38), 45, 71, 74] 1186

Held, that the loss incurred on the sale of shares on a stock exchange platform, where securities transaction tax is paid, is eligible to be set off against the long-term capital gains earned by the assessee from sale of unlisted shares. The AO is directed to set off the loss against the long-term capital gains. Relied on *Royal Calcutta Turf Club v. CIT(1983) 144 ITR 709 (Cal)(HC)*, wherein the Court held that when the entire source

is not excluded from the charging section and only a special type of the income is excluded then the interpretation of law has to be made strictly and cannot be deemed to include the any other income or loss resulting or falling within the same source. (AY. 2014-15)
Rita Gupta v. Dy. CIT (2024)113 ITR 1 (Kol) (Trib)

1187 **S. 70 : Set off of loss-One source against income from another source-Same head of income-Capital loss-Transfer of listed securities to his partnership firm-Long term capital loss-Colourable device-Loss is not allowed to be set off. [S. 10(38), 45]**
Assessing Officer disallowed assessee's claim for setting off Long-Term Cap-ital Loss from off-market transactions involving sale of listed shares to his sister concern. Assessing Officer deemed those transactions as a colourable device used to artificially reduce taxable income, since assessee maintained effective control over shares while creating losses to offset against future gains. Commissioner (Appeals) allowed assessee's claim, stating it was legitimate tax planning. On appeal the Tribunal held that from records that assessee transferred said listed securities to his partnership firm, which paid him consideration while he retained control over securities and this artificial transaction created a long-term capital loss for set-off against cur-rent and future gains without any actual loss. Transaction under consideration created extraordinary rights and obligations that did not align with principles of fairness, and was an arrangement designed primarily for tax evasion. Accordingly the order of Commissioner (Appeals) is set aside and the order of the Assessing Officer be restored. (AY. 2017-18)
ACIT v. Vallabh Roopchand Bhansali (2024) 209 ITD 165 (Mum) (Trib.)

1188 **S. 70 : Set off of loss-One source against income from another source-Same head of income-Short term capital loss-Under provisions of section 70(2), STCL arising from any asset could be set off against STCG arising from any other asset under a similar computation made irrespective of different rate of tax. [S. 70(2)]**
The assessee, a tax resident of USA, was registered with the Security Exchange Board of India (SEBI) as a Foreign Portfolio Investors (FPI) for carrying out investment activity in Indian capital markets. The assessee claimed short-term capital gain (STCG) on the sale of derivatives taxable at rate of 30 per cent and during the year, the assessee had also claimed short-term capital loss (STCL) taxable at rate of 15 per cent and the same was set off against the STCG which was taxable at rate of 30 per cent as referred above. In addition to that, the assessee had also claimed brought forward STCL taxable at the rate of 15 per cent to set off against the balance STCG earned on sale of derivatives. The Assessing Officer after referring provisions of section 70(2) held that the STCG on derivatives taxable at rate of 30 per cent and STCL taxable at the rate of 15 per cent were not falling under similar computation and, therefore, disallowed the claim of set off. DRP affirmed the order of the AO. On appeal the Tribunal held that under provisions of section 70(2), STCL arising from any asset could be set off against STCG arising from any other asset under a similar computation made irrespective of different rate of tax. (AY. 2020-21)
JS Capital LLC v. ACIT (IT) (2024) 206 ITD 142 (Mum)(Trib.)

S. 71 : Set off of loss-One head against income from another-Constitutional validity of sub-S. (3A) of S. 71 inserted by Finance Act, 2017-Income from house property from any other head of income at Rs. 2 lakh-Not violative of Art. 14 and 19(1(g) of the Constitution of India. [S. 22, 23, 71(3A), Art. 14, 19(1)(g), Art. 226] 1189

The asseessee challenged the constitutional validity of Sub-S. (3A) of S. 71 only aims at capping the set off of losses under the head of "Income from house property" from any other head of income at Rs. 2 lakh is violative of Article 14 and 19(1)(g) of the Constitution of India. Dismissing the petition the Delhi High Court held that neither the old provisions, as they existed, nor the amended provisions endeavour to create or disturb any indefeasible right in favour of the assessee so as to allow him to claim any legitimate expectation to set off the amount in the manner canvassed by him. In the absence of any such crystallized right, the argument of the assessee that the concerned amendment is violative of Art. 14 of the Constitution does not hold any water. Additionally, the insertion of sub-S. (3A) does not take away the benefits of deduction provided to the assessee in toto, rather it only attempts to circumscribe the indefinite amount of set off to a certain amount. Impugned provision does not create an absolute restriction on the taxpayer's pre-existing right to claim the deduction in question and the capping of Rs. 2 lakh is meant to prevent the abuse of the relevant provision. Tool adopted to prevent this abuse is also reasonable and it is not the case of the assessee that the legislature had a less restrictive tool to achieve the object. Therefore, the law is proportionate with the object sought to be achieved and cannot be faulted for being violative of Art. 19. Further, it is vividly discernible from a plain reading of the amended provision that the said amendment came into effect only from 1st April, 2018 i.e., period commencing after the passing of the Act of 2017.

Sanjeev Goyal v. UOI (2024) 339 CTR 529/ 163 taxmann.com 122 (Delhi)(HC)

S. 72: Carry forward and set off of business losses-Carry forward and set off losses-Change in share holdings-Companies which public are not substantial interested-Tribunal was justified in directing the AO to expunge the concluding remark brought forward loss is not allowed to be carry forward-Unabsorbed depreciation and capital losses do not fall within the scope and ambit of S. 79 [S. 32(2), 79, 254(1), 260A, 1922 Act, S. 24(2), 24(3)] 1190

Dismissing the appeal of the Revenue the Court held that on appeal the Tribunal held that it was not within the remit of the AO, dealing with the assessment year in issue, to make an observation concerning an aspect that would fall within the jurisdiction of the AO, when the aspect concerning carry forward and set off losses would come to the fore. A textual reading of S. 79 makes it evident that it does not empower an AO, who exercises jurisdiction qua a particular assessment year, to place limitations on the ad-judicatory powers of the AO who would be called upon to deal with the matter in subsequent years. Furthermore, there is another facet of the matter that, Revenue's counsel has failed to address while invoking the provisions of S 79. This concerns the right of the assessee, albeit as per law, to carry forward 'unabsorbed depreciation' and 'capital losses'. A perusal of s. 79 would show that unabsorbed depreciation and capital losses do not fall within its scope and ambit. There is no practical efficacy in the assessee carrying forward business losses, unabsorbed depreciation, and capital losses

unless there is a possibility of setting off those losses in the future, albeit subject to the provisions of the Act. These are the aspects that the concerned AO would examine in the relevant assessment year in which such set off is claimed. Order of Tribunal is affirmed. Relied on *CIT v. Manmohan Das (1966) 59 ITR 699 (SC)*. (AY. 2014-15)
PCIT v. Burda Druck India (P) Ltd [2023] 157 taxmann.com 563/(2024) 338 CTR 627 (Delhi)(HC)

1191 **S. 74: Losses-Capital gains-Short term capital loss from sale of shares-Issue of bonus shares-Sale of original shares-Loss is allow-able to be set off against the long term capital gain-Allegation of colourable device is not accepted. [S. 45]**
Mindtree Ltd. announced bonus shares at the ratio of 1:1. As a result of is-sue of bonus shares, the price of share reduced almost to half its original price. Taking advantage of such reduction in price of shares, the assessee sold the shares purchased earlier resulting in short term capital loss of Rs. 9,11,83,666/-. According to the AO, by adopting colourable device of selling the shares of Mindtree Ltd. having anticipated the reduction in price due to issuance of bonus shares, assessee arranged its affairs in a manner so as to derive maximum benefit by selling the shares purchased earlier at loss and deferring the sale of bonus shares to future dates so as to derive exempt long term capital gain. He concluded that adopting unfair means the assessee has reduced its tax liability on account of long term capital gain derived on sale of shares of Avendus Capital Pvt. Ltd. Accordingly, he disallowed the short term capital loss of Rs. 9,11,83,666/-and added back to the income of the assessee as long term capital gain. CIT(A) allowed the claim of the assessee. On appeal the Tribunal held that the conclusion drawn by the AO is wholly irrational and unsustainable. When the transactions relating to purchase and sale of shares are beyond doubt and are not in the nature of sham transaction even there is no such allegation by the Assessing Officer, the short term capital loss derived by the assessee from sale of shares cannot be prevented from being set off against the long term capital gain by alleging adoption of colourable device. There is no requirement under the law that the assessee has to pay more tax. If the assessee arranges her affairs within the legal framework and through legitimate means to reduce its tax liability, the Assessing Officer cannot prevent her from doing so. When there is no evidence on record to doubt the genuineness of the transactions entered into by the assessee, the resultant capital loss derived out of such transaction cannot be disallowed. (ITA No. 412/Mum/ 2024 dt. 29-11-2024 (AY. 2016-17)
ACIT v. Renu Vohara (Mum)(Trib) www.itatonline.org.

1192 **S. 80G: Donation-No failure to meet aims and objects-Exemption was granted for earlier years-No specific finding recorded by Commissioner(E) that assessee had failed to meet out its aims and objects and that funds received by assessee-society had been utilised for any profit, personal gains or any other purposes-Order passed by Commissioner(E) is set aside and matter is remanded back for reconsideration. [S. 12, 12A, 12AA, 800G(5)(vi), Art. 226, Form No. 10G]**
Assessee filed an application for renewal of exemption under section 80G(5). Commissioner (E) denied renewal of exemption under section 80G on ground that assessee had not properly maintained accounts and proofs of expenses made by it had

not been produced. On Writ petition filed by the assessee the Punjab and Haryana High Court held that there was no specific finding recorded by Commissioner (E) that assessee had failed to meet out its aims and objects. It was also not denied that except for period in question, ever before, renewal under said provision of law i.e. section 80G, was rejected. Grant of registration/exemption under section 80G, in favour of assessee-society, right from 1974 was also an admitted position. Since entire donations and the amount received by assessee–society were solely utilized for purpose of charitable functions, merely because there was an infirmity in submission of income-tax return and Form 10B was not submitted, would not result in presumption that assessee-society was not per-forming charitable functions. Since there was no specific finding recorded by Commissioner(E) that assessee-society had failed to meet out its aims and objects and that funds received by assessee-society had been utilised for any profit, personal gains or any other purposes, impugned order passed by Commissioner(E) was to be set aside and matter was to be remanded back for reconsideration.

Mumukshu Mandal (Regd.) Shri Geeta Mandir v. CIT (2024) 300 Taxman 373 /340 CTR 522 /(2025) 473 ITR 452 (P&H)(HC)

S. 80G : Donation-CBDT, vide Circular No. 8 of 2022 dated 31-3-2022, extended time limit with respect to both existing trusts and new trusts for registrations under sections 10(23C), 12A and 80G(5) –CBDT circular did not grant extension to new trusts for filing forms for application-Clause 5(ii) of circular No. 6/2023, dated 24-5-2023 was arbitrary and violative of article 14 of Constitution of India and accordingly, would be ultra vires Constitution. [S. 10(23C), 12A, 80G(5), 119(2)(b), Art. 14, 226] 1193

CBDT, vide Circular No. 8 of 2022 dated 31-3-2022, extended time limit with respect to both existing trusts and new trusts for registrations under sections 10(23C), 12A and 80G(5). However, CBDT, while extending time limit further vide impugned Clause 5 (ii) of Circular No. 6 of 2023, dated 24-5-2023, did not grant extension to new trusts for filing forms for application of registration under clause (iii) of first proviso to section 80G(5) of the Act. The assessee filed writ petition challenging the circular as arbitrary. Al-lowing the petition the Madras High Court held that, revenue could not provide any rationale for such a classification. Even though new trusts as well as existing trusts had no right to demand for extension of time as a matter of right, when revenue had thought it fit to extend time, considering hard-ship, there was no material placed before Court, nor any reasoning as contained in impugned order that new trusts did not face hardship in respect of filing of application under section 80G(5) alone. Further, leaving out clause in respect of section 80G(5) alone, that too only in respect of new trusts did not in any manner relate to object sought to be achieved by impugned circular nor did it provide any basis for discrimination/classification. Differential treatment was not based on any substantial distinction that was real and pertinent to object of circular. Therefore, clause 5(ii) of circular No. 6/2023, dated 24-5-2023 was arbitrary and violative of article 14 of Constitution of India and accordingly, would be ultra vires Constitution. Circulars and Notifications: Circular No. 8 of 2022, dated 21-3-2022 and Circular No. 6 of 2023, dated 24-5-2023.

Sri Nrisimha Priya Charitable Trust v. CBDT (2024) 299 Taxman 257 /338 CTR 713/ 470 ITR 710 (Mad.)(HC)

1194 **S. 80G : Donation-Application for approval of institution-Genuineness of activities are not in doubt-Quantum of charitable activities cannot be the basis for granting approval-Order of Tribunal directing to grant the approval is affirmed. [S. 80G(5) R. 11AA]**

Assessee applied for approval under section 80G(5)(vi) of the Act. CIT (E) rejected application, citing a deficiency in significant charitable activities as per examination of charity accounts. On appeal, Tribunal held that lack of significant charitable activities did not invalidate genuineness of trust's activities. It clarified that there's no specific timeframe mandated for carrying out charitable activities under section 80G(5)(vi) and as Commissioner didn't provide reasons for rejecting application based on specified conditions, Tribunal directed Commissioner to grant approval under section 80G(5) of the Act. Dismissing the appeal of the Revenue the Rajastan High Court held that the Tribunal was justified in granting approval under section 80G(5) to the assessee-charitable trust. The Tribunal had found that the Commissioner did not raise any objection with regard to the genuineness of the assessee's activities, that his objection was only with the volume of activities carried out by the assessee on the ground that in eight months no significant charitable activities had been carried out by it. On the facts the Tribunal had held that as per rule 11AA(5), the Commissioner could reject the application for approval under section 80G, after recording the reasons for such rejection in writing, if he was satisfied that one or more conditions laid down in clauses (i) to (v) of sub-section (5) of section 80G were not fulfilled, that since the Commissioner had not recorded any reason that the assessee had failed to fulfil the statutory conditions, his order rejecting the application for approval could not be affirmed and that therefore, the Commissioner was directed to grant approval under section 80G(5). No substantial question of law.

CIT (E) v. Gangadeen Niranjan Lal Data Charitable Trust (2024)463 ITR 690 (Raj)(HC)

Editorial : SLP of Revenue is dismissed, leaving question of law open. CIT (E) v. Gangadeen Niranjan Lal Data Charitable Trust (2024) 297 Taxman 294/463 ITR 695 (SC)

1195 **S. 80G: Donation-Existing Trust-Time limit for provisionally registered Trust for seeking regular registration-Harmonious interpretation-The time limit for applying for regular registration for existing trust is six months of the expiry of provisional registration. [S. 12AA, 80G(5), Form 10AB]**

The Trust had commenced its activities from 4-3-1974. The assessee received provisional approval u/s 80G(5) on 19-8-2022 for the period up to AY. 2025-26. The Assessee Trust filed application for final registration in Form No. 10AB on 27-3-2023. The CIT(E) rejected the application on the ground that the application is barred by limitation. On appeal the Tribunal held that applying the Harmonious interpretation the time limit for applying for regular registration for existing trust is six months of the expiry of provisional registration. Accordingly, the order of CIT(E) rejecting the application is set aside for de novo consideration. Referred the budget speech of the *FM, K. P. Varghese v. ITO (1981)131 ITR 597 (SC) (ITA No. 1177 /Pun/ 2023 dt. 5-1-2024)*

Shri Kailash Math Trust v. CIT(E) (2024) Chamber's Journal-March 114 (Pune)(Trib)

Editorial : Followed in Saaksh Foundation v. CIT(E) (2024) 207 ITD 671 (Mum)(Trib)

S. 80G: Donation-Inability of file fresh application owing to technical glitches in the portal-Assessee is entitled to file fresh application under cl. (iii) of first proviso to sub-s. (5) of s. 80G before the CIT(E), in view of Circular No. 7 of 2024, dt. 25th April, 2024 even manually, in case technical glitches continues to disallow filing thereof-CIT(E) is directed to dispose of the application in accordance with law. [S. 80G(5), Form No 10AC] 1196

Held that the fact that the application filed under cl. (iii) of first proviso to sub-s. (5) of s. 80G was withdrawn by the assessee and it was unable to file a fresh application owing to some technical glitches in the portal of the Department, and approval has already been granted to the assessee by the CIT(E) on fresh Form No. 10AC, assessee is entitled to file fresh application before the CIT(E), in view of Circular No. 7 of 2024, dt. 25th April, 2024 even manually, in case technical glitches continues to disallow filing thereof. CIT(E) is directed to dispose of the application in accordance with law.

Vision Sansthan v. ITO (2024) 229 TTJ 816 / 238 DTR 25 / 162 taxmann.com 359 (Jaipur) (Trib)

S. 80G: Donation-Time-limit for filing application for final approval-Form No. 10AB was filed on 23rd Sept., 2023 was well within time i.e., within six months prior to the expiry of the period of provisional approval-Order of the CIT(E) is set aside with direction to pass a fresh order on merits as provided in law. [S. 12A(1)(ac)(vi), 80G(5)(iii)] 1197

The CIT(E) rejected the application on the ground that the application is not maintainable. On appeal the Tribunal held that the assessee is existing society which was provisionally approved under s. 80G(5)(iii) and consequently, the application for the final approval vide Form No. 10AB, dt. 23rd Sept., 2023 is well within the time-limit prescribed under s. 80G(5)(iii) and therefore. If the date of commencement of activity is given weightage, then the date of provisional approval i. e., 5th April, 2023 becomes redundant and infructuous. Form No. 10AB, dt. 23rd Sept., 2023 was filed on or before 30th Sept., 2023, the due date (which was extended by Circular No. 6 of 2023, dt. 24th May, 2023 of CBDT) of filing. Order of the CIT(E) is set aside with direction to pass a fresh order on merits as provided in law. (AY. 2023-24)

Indian Red Cross Society v. CIT (E) (2024) 230 TTJ 206 / 239 DTR 167 / 162 taxmann.com 194 (Chd)(Trib)

S. 80G: Donation-Tata Institute of Social Sciences-Approved university or educational institution as per notification dt. 15th Dec., 1993-Order of CIT(A) restoring the matter back to the AO to grant deduction to the assessee under s. 80G to the extent of 50 per cent of donation is affirmed. [S. 80G(2)(a)(iiif), 80G(4)] 1198

Held that S. 80G(2)(a)(iiif) is not mentioned under s. 80G(4) and, therefore, s. 80G(4) does not restrict the deduction of donation given to such entity by restricting it to 10 per cent of the gross total income. Order of CIT(A) re-storing the matter back to the AO to grant deduction to the assessee under s. 80G to the extent of 50 per cent of donation is affirmed. (AY. 2017-18)

ACIT v. RD Tata Trust (2024) 231 TTJ 485 (Mum)(Trib)

1199 **S. 80G: Donation-Time-limit for filing application for final approval-Existing Trust or institution-Applied for permanent registration under S. 80G before the expiry of provisional approval-The application of the assessee was not time-barred-The order under s. 80G is set aside to CIT(E) for de novo adjudication-Speech of the Finance Minster is relevant. [S. 12AB, 80G(5)]**

The assessee received provisional approval under s. 80G(5) on 21st Jan., 2022 and it was valid up to asst. yr. 2024-25. It applied for registration under s. 80G on 4th July, 2023, which was before asst. yr. 2024-25. The CIT(E) rejected the application. On appeal the Tribunal held that the assessee applied for permanent registration under s. 80G before the expiry of provisional approval, therefore, the application of the assessee was not time-barred. The order under s. 80G is set aside to CIT(E) for de novo adjudication. Speech by the Finance Minister is relevant, followed, *K. P. Varghese v. ITO (1981) (1981) 131 ITR 597 (SC), Sole Trustee, Loka shikshana Trust v. CIT (1975)101 ITR 234 (SC), Indian Chamber of Commerce v. CIT (1975) 101 ITR 796 (SC), Addl. CIT v. Surat Art Silk Cloth Manufacturers Association (1980) 121 ITR 1(SC)*

Gender Lab Foundation v. CIT (E) (2024) 230 TTJ 878 / 240 DTR 217 (Pune)(Trib)

1200 **S. 80G: Donation-Provisional registration-Valid till 2024-25-application under s. 80G(5) in the prescribed form on 26th Sept., 2023-Application filed under S. 80G(5) in the prescribed form on 26th Sept., 2023 is valid application-CIT(E) is directed to treat the application as filed within statutory time. [S. 80G(5)]**

Held that the assessee had received provisional approval and it was valid till Assessment year 2024-25, the application under S. 80G(5) filed in the prescribed form on 26th Sept., 2023 was within the prescribed time-limit and valid. Tribunal directed the CIT(E) to treat the application as filed within statutory time and allow the exemption.

Chopade Charitable Trust v. CIT (E) (2024) 232 TTJ 57 (UO)(Pune) (Trib)

1201 **S. 80G: Donation-Preservation of environment-Engaged in the recycling of plastic waste-Charitable activity-Entitle to registration under section 80G (5). [S. 11, 12, 80G(5)(ii), Bombay Public Trust Act 1950]**

The Tribunal held that the object of the Trust is preservation of environment including watersheds, forest, and wildlife, and is Engaged in the recycling of plastic waste. Trust is registered under section 11, 12 12A and also under Bombay Public Trust Act 1950. The assessee satisfies all the condition of S 80G(5)(i). The Tribunal directed the Commissioner (Exemption) to grant the approval under section 80G of the Act.

Huhtamaki Foundation v. CIT (E) (2024) 163 taxmann.com 174 / 228 TTJ 98 / 235 DTR 118 (Mum) (Trib)

1202 **S. 80G: Donation-Provisional registration-Time for filing application for regular registration-Words "or within six months of commencement of its activities, whichever is earlier"-The provisional approval is effective up to assessment year 2025-26-Directed to treat the application as filed within statutory limit and allow approval as per the law. [S. 80G(5)]**

The assessee received provisional approval under S. 80G(5) by order dt. 9th July, 2021 for the period from assessment years 2021-22 to 2023-24 and dt. 22nd Sept., 2022 for

the period from Assessment years 2023-24 to 2025-26. Therefore the application in Form No. 10AB filed by the assessee on 8th April, 2023 is within the time-limit allowed under cl. (iii) of first proviso to S. 80G(5). Even otherwise, the provisional approval is effective upto asst. yr. 2025-26 and the CIT(E) has not mentioned about any violation. Therefore, the rejection is not valid. CIT(E) is directed to treat the application as filed within statutory time and verify assessee's eligibility for approval as per the provisions of the Act.
T. B. Lulla Charitable Foundation v. CIT (E) (2024) 227 TTJ 858 / 236 DTR 61 / 162 taxmann.com 75 (Pune) (Trib)

S. 80G: Donation-Mentioning wrong section code-Error typographical and inadvertent-Remanded to Commissioner (E) to treat application under proper section code-Circular No. 7 Of 2024, Dated 25-4-2024 (2024) 463 ITR 14(St). [S. 80G(5), Form No 10B]. 1203
Tribunal held that according to Central Board of Direct Taxes Circular No. 7 of 2024, dated April 25, 2024(2024)463 ITR 14 (St) in the matter of filing of the assessee's application the issue of mentioning of the wrong section code is a common and frequent error. The issue is remanded to the Com-missioner (E) to consider the assessee's application under the proper section code for grant of approval in accordance with law after providing reasonable opportunity of hearing to the assessee.
Help for Children in Need Foundation v. CIT (E) (2024)116 ITR 83 (SN) (Pune) (Trib)

S. 80G: Donation-Application for registration dismissed on ground Form 10AB was filed beyond time prescribed-Central Board Of Direct Taxes Circular No. 7 Of 2024, Dated April 25, 2024 (2024) 463 ITR 14 (St)-Directed Commissioner (E) to consider Assessee's application and grant exemption-Delay of 243 days in filing of appeal is condoned. [S. 12A, 80G(5)(iii), 253(5), Form No. 10A, 10AB] 1204
The assessee is provisionally registered under section 12A of the Income-tax Act, 1961, and under section 80G(5)(iii) on March 15, 2022. Application for approval under section 80G(5)(iii) was filed on November 1, 2022 in form 10AB. The Assessing Officer treated it as not maintainable on the ground that the Central Board of Direct Taxes by Circular No. 6 of 2023, dated May 24, 2023 (2023) 454 ITR 37 (St) had extended the date of filing new applications in form 10AB only up to September 30, 2022. On appeal, allowing the appeal the Tribunal held that by Circular dated April 25, 2024 issued by the Board the due date for filing forms 10A and 10AB had been extended up to June 30, 2024. Since, the assessee's application was filed on November 1, 2022, it was before the extended due date June 30, 2024. Under the circumstances, the Commissioner (E) is directed to admit the assessee's application in form 10AB and grant approval under section 80G(5)(iii) in accordance with law. (AY. 2023-24)
Seva Bharati v. CIT (E) (2024)113 ITR 74 (SN)(Kol)(Trib)

S. 80G: Donation-Time-limit for application for approval-Dismissed on ground that application was made beyond time-Limit - Board circular extending time-Matter remanded to the CIT(E) to decide in accordance with law. [S. 80G(5), Form No 10B] 1205
Held, that in Circular No. 7 of 2024, dated April 25, 2024 (2024) 463 ITR 14 (St) the Board has granted liberty to the assessee to file fresh application in form 10AB for

registration under clause (iii) of the first proviso to section 80G(5) on or before June 30, 2024. Therefore, the assessee is to be provided one more opportunity to apply and the Commissioner (E) was to decide the application afresh according to the facts and law considering the earlier application as filed within the time-limit. The assessee is to respond to the notice issued by the Commissioner (Exemptions) and submit the requisite details on the appointed date without seeking any adjournment, failing which the Commissioner (E) would be at liberty to pass appropriate order as per fact and law.
Taxation Consultants Association v. CIT (E) (2024) 113 ITR 30 (SN)(Pune)(Trib)

1206 **S. 80G: Donation-Application was filed on or before 30-9-2023-Further stood extended to 30-6-2024 vide Circular No. 7 of 2024, dated 25-4-2024-Rejection of application by CIT(E) is not proper on the ground that the assessee was required to file application on or before 30-9-2022-Matter remanded to the CIT(E) for de novo consideration. [S. 80G(5)]**

Assessee-trust was registered on 1-9-2013. It was granted provisional approval under clause (iv) of first proviso to section 80G(5) on 16-9-2022. It filed an application under clause (iii) of first proviso to section 80G(5) on 28-3-2023 for getting final approval. Commissioner (E) taking view that assessee had commenced activities in year 2018-19 itself held that assessee was required to file application in Form No. 10AB on or before 30-9-2022, which it failed to submit and accordingly rejected application as having not been filed within prescribed time-limit. On appeal the Tribunal held that in view of judicial precedents on subject assessee could have filed application for grant of final approval on or before 30-9-2023 which further stood ex-tended to 30-6-2024 vide Circular No. 7 of 2024, dated 25-4-2024, application for grant of final approval under section 80G(5) could not be rejected on ground that same was not filed before 30-9-2022. Matter restored to file of Commissioner (E) for de novo consideration.
Grow Foundation v. CIT (2024) 209 ITD 1 (Ahd) (Trib.)

1207 **S. 80G: Donation-Time limit for filing application for final registration-Application moved had been moved well within prescribed time period i.e., before expiry of six months of provisional registration-Not barred by limitation. [S. 80G(5)(iii), Form No. 10AB]**

Assessee had moved an application for provisional registration which was allowed on 24-8-2023. It filed an application in Form No. 10AB for seeking final registration under section 80G(5)(iii) on 4-9-2023-Commissioner (E) rejected said application on ground that same was filed beyond time limit prescribed under clause (iii) of first proviso to section 80G(5) and various other circulars issued by Department from time to time. Tribunal held that since application seeking final registration had been moved well within prescribed time period i.e., before expiry of six months of provisional registration, same is not barred by limitation. CIT (E) is directed to admit application of assessee as filed within stipulated period and examine same on mer-its as per law. (AY. 2024-25)
FI Foundation v. CIT (2024) 209 ITD 320 (Chd) (Trib.)

S. 80G: Donation-Granted provisional registration-Prior to expiry of due date application was filed-Rejection order is set aside and matter is remanded with a direction to treat assessee's application dt. 22/08/2023 as filed within time limit. [S. 80G(5)(iv)] 1208

Assessee's application for provisional registration under section 80G(5)(iv) was accepted by revenue and certificate to that effect vide order dt. 15/11/2021 was issued. Assessees vide its application dated 22-08-2023 applied for regular/final 80G approval/registration. Application is rejected by Commissioner (E) in limine on ground that application was barred by limitation. On appeal the Tribunal held that CBDT vide Circular No. 06/2023 had extended time limit upto 30/09/2023 in all cases where due date for making application had expired prior to such date. Therefore, assessee's application was filed well within extended time limit and in consequence impugned order of rejection was to be set aside and matter was to be remanded with a direction to treat assessee's application dt. 22/08/2023 as filed within time limit.

Parner Vipassana Samiti v. CIT (2024) 209 ITD 370 (Pune) (Trib.)

S. 80G: Donation-Time limit for applying for regular registration-Provisional application up to Assessment Year 2024-25-Application in Form 10AB within six months before expiry of provisional approval-Application is within prescribed time limit-Matter is remand-ed to the file of CIT(E). [S. 80G(5)] 1209

Assessee filed an application for approval under section 80G(5) on 26-9-2023. Commissioner (E) held that activities of assessee had commenced in 1986, hence assessee was liable to make application for approval under section 80G(5) on or before 30-6-2021 which was extended to 30-9-2022 by various circulars of CBDT. He rejected the application on ground that it was filed beyond statutory time limit. On appeal the Tribunal held that the assessee had provisional approval under section 80G(5) up to assessment year 2024-25. As per proviso to section 80G(5) time limit where assessee had already received provisional approval is six months before expiry of provisional approval or within six months of commencement of its activities whichever is earlier. Since the assessee had made application in Form 10AB on 26-9-2023, which is within prescribed time limit and thus, it was valid application. Therefore Commissioner (E) is directed to treat application as filed within statutory time and verify assessee's eligibility as per Act. Matter is remanded to the file of CIT(E).

Chopade Charitable Trust v. CIT (2024) 209 ITD 489 (Pune) (Trib.)

S. 80G: Donation-Deductions to be restricted to 10 Per Cent. of gross total income-Entitled to deduction in respect of donations to institute registered under section 80G(2)(a)(iiif)-Claim shown separately in computation of total income-No infirmity in Commissioner (Appeals) directing Assessing Officer to verify claim and grant it-Not claimed benefit of sections 11 and 12 of the Act, there was no question of granting the benefit of carrying forward the deficit of this year to the next year. [S. 11, 12, 80G(2)(a)(iiif), 80GGA] 1210

Held that donations to entities approved under section 80G(2)(a)(iiif) were not mentioned under section 80G(4) of the Act. The Commissioner (Appeals) was right in restoring the matter to the Assessing Officer to grant deduction to the assessee under

section 80G of the Act in respect of donations to Tata Institute of Social Sciences registered under section 80G(2)(a)(iiif) of the Act after verification and his order was to be con-firmed. That the deduction under section 80GGA of the Act was clubbed with deduction under section 80G of the Act in the return of income but shown separately in the computation of total income. It could not be said that the assessee had not claimed such deduction in the return of income. It was not the claim of the Revenue that in the return filed by the assessee such functionality was available at that time. In view of this, there was no infirmity in the order of the Commissioner (Appeals) directing the Assessing Officer to verify the claim and grant it while giving effect to the appellate order. Held that as the assessee had not claimed benefit of sections 11 and 12 of the Act, there was no question of granting the benefit of carrying forward the deficit of this year to the next year. (AY. 2017-18)
Asst. CIT v. RD Tata Trust (2024) 112 ITR 61 (SN)(Mum)(Trib)

1211 **S. 80G: Donation-Denial of registration-The extended time limit of 30.09.2023 as per CBDT Circular 29 dated 24.05.2023 would apply to Form No. 10AB-CIT(E) is directed to consider the application on merits without raising the issue of timeline. [S. 80G(5)(iv), Form No 10AB, 10AC]**
The assessee trust had commenced its activities on 17.01.1992. The assessee has already received provisional approval in Form 10AC u/s. 80G (5)(iv) for a period commencing from 21.10.2022 to AY 2025-26. It sought approval u/s 80G(5)(iii) by filing Form No. 10AB on 30. 03. 2023 which was rejected by Ld. CIT(E) on the ground that the assessee had violated the mandatory timelines as statutorily provided. However, on further appeal, after taking into consideration the order passed by the co-ordinate bench in the case of CIT-1982 *Charitable Trust v. ITO (E) [2024] 160 taxmann.com 475/206 ITD 543 (Chennai-Trib.)* and judgment of the Madras High Court in the case of *Sri Nrisimha Priya Charitable Trust v. CBDT [2024] 161 taxmann.com 209* the Tribunal set aside the impugned order and directed Ld. CIT(E) to consider the application on merits without raising the issue of timeline. (AY. 2025-26)
Teddy Trust v. CIT (E) (2024) 112 ITR 569 / 164 taxmann.com 474 (Chennai)(Trib.)

1212 **S. 80G: Donation-Commenced its activities much prior to grant of provisional approval under section 80G(5)-Assessee would be entitled to file application for grant of regular approval under section 80G(5) prior to six months of expiry of provisional approval. [S. 80G(5), Form No. 10AB]**
Assessee-trust is granted provisional approval under section 80G(5) on 1-10-2021 valid upto the period 30-9-2024. Subsequently, it filed application in Form No. 10AB under clause (iii) of first proviso to sub-section (5) of section 80G on 29-9-2023. Commissioner (E) denied grant of approval on ground that assessee had not filed application within prescribed time limit under clause (iii) of first proviso to section 80G(5). On appeal the Tribunal held that where provision produces a manifestly absurd and unjust result which could never have been intended by Legislature, courts may modify language used by Legislature or even 'do some violence' to it, so as to achieve obvious intention of Legislature. Thus, reasonable construction of clause (iii) of proviso to section 80G(5) would be to read into it condition that in place of word 'earlier' word 'later' be

substituted. Since assessee-trust commenced its actual activities on 16-3-2011, in view of construction of clause (iii) of proviso to section 80G(5), assessee trust would be entitled to file application for regular approval prior to six months of expiry of provisional approval, i.e., on or before 31-3-2024. Accordingly it could not be said that application for grant of regular approval was barred by limitation and matter is remanded back for disposal afresh. (AY. 2024-25)
R. L. Education Sanstha v. CIT (2024) 208 ITD 381 (Pune) (Trib.)

S. 80G: Donation-Provisional approval-Commenced it's activities prior to amendments brought in grant of registration of trust effective from 1-4-2021-Filed application for grant of final approval under section 80G(5) within a period of six months from date of grant of provisional registration within extended timeline upto 30-9-2023, Application could not be denied on ground that same was not filed before 30-9-2022 as per Circular No. 6/2023, dated 24-5-2023. [S. 12A, 80G(5), Form No 10A] 1213
Assessee trust is an old Trust which was registered on 6-3-2004. It was granted provisional approval under section 80G(5) on 26-10-2022 and filed application for grant of final approval under section 80G(5) on 28-3-2023. Commissioner (E) held that benefit of circular No. 6/2023 dated 24-5-2023 of CBDT for filing belated application under clause (i) of first proviso to section 80G(5) was available till 30-9-2022 only and since assessee did not file application under section 80G(5) within time limit, application was to be rejected. The Tribunal allowed the appeal filed by the assessee and held that since assessee trust had filed application for grant of final approval under section 80G(5) within a period of six months from date of grant of provisional registration and it could have filed application for grant of registration under section 80G(5) in Form 10AB up to 30-9-2023 in view of extension granted to registration of trust under section 12A till 30-9-2023, application for grant of final registration under section 80G(5) could not be denied only on ground that same was not filed before 30-9-2022.
Navsari Agricultural University v. CIT (2024) 208 ITD 521 (Ahd) (Trib.)

S. 80G: Donation-Denial of registration-Delay in filing Form No. 10AB for renewal-Circular 6/2023-Directed to consider the registration on merits. [S. 12AB, 80G(5)] 1214
The Tribunal allowed the appeal filed by Muthi Trust, directing the Commissioner of Income Tax (Exemptions) to reconsider the application for Section 80G approval on merits. The CIT(E) had rejected the trust's application for renewal under Section 80G(5) due to a delay in filing Form No. 10AB. The Tribunal noted that while the timeline for filing Form 10AB for recognition under Section 12AB had been extended until 30. 09. 2023 vide CBDT Circular No. 6/2023 dated 24.05.2023, this extension had not been explicitly applied to applications under Section 80G. Hon'ble High Court of Madras in Sri Nrisimha Priya Charitable Trust (WP Nos. 27030 of 2024) held that clause 5(ii) of Circular No. 6 of 2023 dated 24.05.2023 is illegitimate, arbitrary and ultra vires the Constitution of India and that the extension shall apply to applications under section 80G(5) also. The Tribunal relying on its own decision and Madras High Court's ruling in *Sri Nrisimha Priya Charitable Trust v. CBDT (2024) 470 ITR 710 (Mad)(HC)* remanded the case back to the CIT(E).
Muthi Trust v. CIT (E) (2024) 112 ITR 51(SN) (Chennai)(Trib.)

1215 **S. 80G: Donation-Registration-After grant of provisional approval, the application cannot be rejected on the ground that the institution had already commenced its activities even prior to grant of provisional registration. [S. 80G(5)(iv), Form No 10AC.]**
The assessee was already approved / registered u/s. 80G(5) of the Act since 2008. Pursuant to amendment carried out in 2020, the assessee applied for provisional approval u/s. 80G(5)(iv) instead of applying for u/s. 80G(5)(i) of the Act. The assessee was granted provisional registration in Form 10AC vide order dated 24.04.2021 for period from 24.04.2021 to A.Y. 2024-25. The application for final registration u/s. 80G(5)(iii) was filed afresh on 25.08.2023 but the same was rejected by the CIT(E) on the ground that the time-limit prescribed for making an application for final approval under section 80G of the Act was at least six months prior to the expiry of the period of the provisional approval or within six months of the commencement of its activities, whichever is earlier. On appeal, after taking into consideration the orders of co-ordinate benches, the Tribunal held that the object and intention behind CBDT Circular No. 7 of 2024 dated 25.04.2024 is not to deprive institutions of its benefit and therefore, the assessee will also be entitled to the benefit of the said Circular No. 7 of 2024 and the application of the assessee will not be rejected by the CIT(E) finding any fault in the application that the assessee may file afresh application in form 10A in accordance with Circular No. 7 of 2024.
Baijmath Somani Charitable Trust v. CIT (E) (2024) 112 ITR 705 /230 TTJ 224/238 DTR 321/ 162 taxmann.com 516 (Kol)(Trib.)
Satyanarayan Somani Charitable Trust v. CIT (E) (2024) 112 ITR 705 /230 TTJ 224/238 DTR 321/162 taxmann.com 516 (Kol)(Trib.)

1216 **S. 80G: Donation-Failure to appear before CIT(E)-Rejection of application in limine-Matter remanded back to Commissioner for decision afresh on merits. [S. 80G(5)]**
Commissioner rejected application filed by assessee under section 80G(5) and cancelled provisional registration under section 80G(5) mainly on reason that assessee had not filed application under section 80G(5) within time limit allowed under clause (iii) of first proviso to section 80G(5). On appeal the Tribunal remanded matter remanded to CIT(E) to decide on merit. (AY. 2022-23)
Asmita Education and Healthcare Foundation v. CIT (2024) 208 ITD 186 (Mum) (Trib.)

1217 **S. 80G: Donation-Failure to file submission-Matter remanded back to Commissioner (E) to consider case of assessee on merit and ex-amine object and activities of assessee and pass order in accordance with law. [S. 80G(5), R. 17A, Form No. 10AB]**
Assessee filed application in Form 10AB for approval under section 80G(5). Said application was rejected by Commissioner (E) on ground that despite issuing show cause notice, dated 3-8-2023, assessee neither filed any sub-mission nor sought any adjournment. On appeal it was contended that the alleged notice dated 3-8-2023 was not served upon assessee due to technical glitch as seen in screen shot of ITBA Portal wherein e-mail address of assessee was not reflected. The Tribunal held that the application of assessee was rejected without giving fair and reasonable opportunity. It was further found that CBDT in a recent Circular No. 7/2024 dated 25-4-2024 had extended time period for filing application in Form 10AB for seeking approval under section 80G(5) up to 30-6-2024. The assessee is also should get the benefit of such

relaxation. Matter is remanded to the file of CIT(E) to consider case of assessee on merit and examine object and activities of assessee and pass order in accordance with law.
Arsala Education & Charitable Trust v. CIT (2024) 207 ITD 77 (Surat) (Trib.)

S. 80G: Donation-Expenditure towards CSR activities are an allowable deduction. [S. 37(1)] 1218
Assessee contributed Rs. 30 lakhs to various educational and charitable trusts and claimed 50% of this amount as a deduction under section 80G. Revenue rejected said claim, arguing that only voluntary donations qualified for section 80G deduction, whereas CSR contributions were statutory obligations. CIT(A) up held the order of the AO. On appeal the Tribunal held that on insertion of Explanation 2 to section 37(1) vide Finance (No. 2) Act, 2014 CSR expenses were excluded from business expenditure and it specified that donations to Swachh Bharat Kosh and Clean Ganga Fund were not deductible under section 80G. Nonetheless, this implied that other donations under section 80G were deductible if conditions were met. Since assessee's contributions did not fall under specified exceptions, they were entitled to section 80G deduction for their donations. (AY. 2020-21)
Alubound Dacs India (P.) Ltd. v. DCIT (2024) 207 ITD 393/ 232 TTJ 547/243 DTR 195 (Mum) (Trib.)

S. 80G: Donation-Rejection of application-Delay in filing Form No 10AB-Matter is remanded to CIT(E) for reconsidering Form No. 10AB for final registration under section 80G(5) by providing opportunity of proper hearing. [S. 80G(5), Form No. 10AB] 1219
Assessee-trust was established on 6-5-2011, received initial approvals under sections 12A and 80G for promoting education. Amendments to sections 12A and 80G in 2020 mandated re-application for approval within three months from 1-4-2021. Reapplying as a charitable institution under section 12AB, Trust obtained provisional registration under section 80G(5)(iv) until assessment year 2024-25. Subsequently, trust applied for permanent registration under section 80G(5). Commissioner (E) rejected the application solely due to belated filing of application under section 80G(5)(iii) in Form No. 10AB on 23-11-2022. On appeal the Tribunal held that Circular No. 6 of 2023 dated 24-05-2023 clarified that even in case, where application in Form No. 10AB is rejected by Commissioner (E) on or before issuance of circular dated 24-5-2023, assessee-trust could make fresh application in Form 10AB on or before 30-09-2023. Since Commissioner (E) did not consider said circular while rejecting final registration under section 80G(5), in such situation, order passed by Commissioner (E) is set aside with a direction to reconsider Form No. 10AB for final registration under section 80G(5) by giving proper opportunity of being heard. Matter remanded.
Avani Thakkar Charitable Trust v. CIT (2024) 207 ITD 20 (Ahd) (Trib.)

S. 80G: Donation-Corporate Social Responsibility (CSR) activities-Mandatory nature of CSR expenditure does not justify disallowance of same under section 80G, if other conditions of section 80G are fulfilled. [S. 37(1), Companies Act 2013 S. 135] 1220
Assessee-company claimed deduction under section 80G in respect of donations. It had suo-motu disallowed expenditure incurred as part of Corporate Social Responsibility (CSR) activities in accordance with provisions of section 37(1). Assessing Officer

disallowed deduction claimed by assessee by holding that donations had been made to meet statutory requirement of provisions of Companies Act 2013 and were accordingly not voluntary donation to be allowable under section 80G. Held by Tribunal that section 80G falls in Chapter VIA, which comes into play only after gross total income has been computed by applying computation provisions under various heads of income, including Explanation 2 to section 37(1) and, thus, there was no correlation between suo-moto disallowance in section 37(1) and claim of deduction under section 80G. Act permits deduction of donations as per section 80G, even though, assessee was not gaining any benefit out of any reciprocity from donee and, similarly, mandatory nature of CSR expenditure does not justify disallowance of same under section 80G, if other conditions of section 80G were fulfilled. (AY. 2020-21)

Interglobe Technology Quotient (P.) Ltd. v. ACIT (2024) 207 ITD 360/114 ITR 611 / 230 TTJ 545 /240 DTR 1 (Delhi) (Trib.)

1221 **S. 80G: Donation-Approval-Application was filed beyond six months of commencement of activities-Tribunal directed the Commissioner (E) to grant exemption registration under section 80G(5)(iii) of the Act. [S. 80G(5)(iii), Form No 10AB]**

Assessee is a Bar Association existing since 1924. Assessee filed an application in Form no. 10AB for grant of regular registration under section 80G(5)(iii). This application of assessee was rejected by Commissioner for reason that initially provisional registration was granted to assessee and assessee had also commenced its activities. However, application for regular registration was moved beyond six months of commencement of activities, thus, this application was not maintainable. On appeal the Tribunal held that time limit to make an application for grant of regular registration under section 80G(5)(iii) in Form no. 10AB was still available to assessee upto end of June, 2024. Assessee had already been granted registration under old regime. Further, though assessee had applied for grant of registration under section 80G quite late but its activities were gone into by authority and those activities were found to be charitable in nature. There was no change in those activities, therefore, there could not be any doubt about activities of assessee for grant of regular registration under section 80G(5)(iii). Registration under section 80G(5)(vi) was granted in perpetuate in 2019 which was cancelled because of change of law by Parliament, otherwise, there was no change in activity of Bar Association. On facts the Tribunal directed the CIT(E) to grant exemption registration under section 80G(5)(iii) of the Act.

Income-tax Bar Association Calcutta v. CIT (2024) 113 ITR 359 / 207 ITD 554 (Kol) (Trib.)

1222 **S. 80G: Donation-Application was rejected on the ground that application was not within six months from date of provisional approval-Since provisional approval granted to assessee was valid till assessment year 2024-25-Application filed by assessee being within time limit permissible under section 80G(5)(iii), was to be restored to file of Commissioner (E) for de novo consideration. [S. 80G(5)(iii)]**

Assessee was granted provisional approval under section 80G(5)(vi) till assessment year 2024-25. Assessee filed an application under section 80G(5)(iii) on 27-1-2023. The said application was rejected by Commissioner (E) on ground that since activities of assessee were already commenced before date of provisional approval on 19-11-2019, assessee was required to file application within six months from date of provisional approval.

On appeal following the ratio of the judgement of the Tribunal, vide order dated 5-1-2024 in *Kailash Math Trust v. CIT (E) [ITA no. 1177/PUN/2023]*, held that words 'within six months of commencement of its activities' are to be interpreted to be applicable in those cases where trust or institutions have not started activities at time of grant of provisional approval. On facts since provisional approval granted to assessee would be valid till assessment year 2024-25, application filed by assessee would be within time limit permissible under section 80G(5)(iii) and since Commissioner (E) rejected application filed by assessee only on this technical ground and had not analysed application on merits as per requirements of section 80G(5), matter is remanded back for de novo consideration.
Saaksh Foundation v. CIT (2024) 207 ITD 671 /230 TTJ 171/ 238 DTR 449 (Mum) (Trib.)

S. 80G: Donation-Expenses on Corporate Social Responsibility Scheme disallowed in computing business income-Eligible for deduction in respect of payments included in corporate social responsibility expenses. [S. 37(1)] 1223
Held, that the assessee is eligible for deduction under section 80G of the Act in respect of certain payments included in corporate social responsibility expenses. (AY. 2017-18, 2018-19)
Dy. CIT v. Reliance Industries Ltd. (2024)109 ITR 180 (Mum)(Trib)

S. 80G: Donation-Application-For existing trust and institutions, time-limit for applying for regular registration is within six months of expiry of provisional registration-Matter remanded. [S. 80G(5)] 1224
Held that the assessee was allotted land by letter dated December 23, 2022 and applied for regular approval under section 80G(5) on April 23, 2023. The activities of the assessee-trust in the real sense started from the day when the beneficiary actually got benefits of the activities carried out by the institution in furtherance of its objects and mere receipt of donation was not a commencement of charitable activities. At the worst for the purpose of counting six months the date of allotment of land was to be taken. The Tribunal restored all the appeals to the Commissioner (E) for reconsideration of their applications under section 80G(5) and to allow them approval under section 80G(5) in accordance with law. That the delay in filing application for regular approval under section 80G(5) of 123 days is condoned. (AY. 2023-24)
Gujarat Hira Bourse v. CIT (E) (2024)109 ITR 91 (SN)(Surat)(Trib)

S. 80G: Donation-Provisional approval-Date of application-Final approval cannot be rejected on the ground that institution had already commenced its activities even prior to grant of provisional registration. [S. 80G(5), Taxation and Other Laws (Relaxation and Amendment of Certain Provisions) Act, 2020] 1225
Assessee has already registered/approved under section 80G(5) as a charitable institution since 2008. However, post-amendment brought into relevant provisions of section 80G vide Taxation and Other Laws (Relaxation and Amendment of Certain Provisions) Act, 2020 with effect from 1-4-2021, assessee applied for provisional approval under clause (iv) to first proviso to section 80G(5). Assessee was granted same for a period from 28-5-2021 to assessment year 2024-25. The assessee applied for final approval under clause (iii) to first proviso to section 80G(5). Commissioner (E), however, rejected application on

the ground that the assessee had already commenced its activities since long even prior to grant of provisional registration, and further, since time period for making application mentioned in clause (iii) to first proviso to section 80G(5) had already expired on 30-9-2022 vide CBDT Circular No. 18/2022, therefore, assessee could not be granted final registration under section 80G(5). On appeal the Tribunal following the judgement in *Tomorrow's Foundation v. CIT (E)(2024) 160 taxmann.com 174 (Kol)(Trib)* held that final approval cannot be rejected on the ground that institution had already commenced its activities even prior to grant of provisional registration.
Anudip Foundation for Social Welfare v. CIT (E) (2024) 206 ITD 115 (Kol.)(Trib.)

1226 **S. 80G : Donation-Delay in filing the application-Tribunal has the power to condone the delay-Delay is condoned-Matter is remitted to CIT(E) to decide application afresh on merits. [S. 80G(5), 254(1), Form No 10AB]**
Assessee-trust commenced its activities from 2-5-2023. It had been granted provisional approval in Form No. 10AC on 6-4-2022 under clause (iv) of first proviso to sub-section (5) of section 80G for period commencing from 6-4-2022 to assessment year 2025-26. It filed an application in Form No. 10AB for approval under clause (iii) of first proviso to sub-section (5) of section 80G on 2-12-2022. Commissioner (E) held that since assessee got provisional approval under section 80G(5), it was required to file application in Form No. 10AB within time period of at least six months prior to expiry of period of provisional approval or within six months of commencement of its activities, whichever was earlier, as stated in clause (iii) of third proviso to sub-section (5) of section 80G and having noted that assessee had not filed application within time limit rejected same as not maintainable. On appeal the Tribunal held that since Tribunal had power to condone delay, hence, delay is to be condoned and matter is remitted to Commissioner (E) to decide application afresh on merits.
Swachh Vapi Mission Trust v. CIT (2024) 206 ITD 187 (Surat) (Trib.)

1227 **S. 80G: Donation-Provisional approval under clause (iv) to first proviso to section 80G(5)-Application for final approval under clause (iii) to first proviso to section 80G(5) could not be rejected on ground that institution had already commenced its activities even prior to grant of provisional registration. [S. 80G(5),Taxation and Other Laws (Relaxation and Amendment of Certain Provisions) Act, 2020]**
Assessee was already registered/approved under section 80G(5) as a charitable institution since 1999. However, post amendment brought into relevant provisions of section 80G vide Taxation and Other Laws (Relaxation and Amendment of Certain Provisions) Act, 2020 with effect from 1-4-2021, assessee applied for provisional approval under clause (iv) to first proviso to section 80G(5). Assessee was granted same on 10-3-2023 for a period of 10-3-2023 to assessment year 2025-26. Thereafter, assessee applied for final approval under clause (iii) to first proviso to section 80G(5). Commissioner (E), rejected application of assessee observing that assessee had already commenced its activities since long even prior to grant of provisional registration, and further, since time period for making application mentioned in clause (iii) to first proviso to section 80G(5) had already expired on 30-9-2022 vide CBDT Circular No. 18/2022, therefore, assessee could not be granted final registration under section 80G(5). On appeal the Tribunal held that

after grant of provisional approval, application for final registration could not be rejected on ground that institution had already commenced its activities even prior to grant of provisional registration and under such circumstances, date of commencement of activity would be counted when an activity was undertaken after grant of provisional registration either under clause (i) or clause (iv) to first proviso to section 80G(5). Since the assessee had applied for final registration after grant of provisional registration, application filed by assessee was within limitation period and, therefore, Commissioner (E) is directed to grant provisional approval to assessee under clause (iii) to first proviso to section 80G(5) and then decide application for final registration. (AY. 2025-26)
Tomorrow's Foundation v. CIT (2024) 206 ITD 161/228 TTJ 880 (Kol) (Trib.)

S. 80G: Donation-Provisional approval-Application for approval can-not be rejected on ground that institution has already commenced its activities even prior to grant of provisional registration-The application filed by assessee being within limitation period, order of Commissioner (E) is set aside-CIT(E) is directed to decide the application for final registration within three months of receipt copy of order. [S. 12AA, 80G(5)(iii), 80G(5)(iv)] 1228

Assessee, a charitable institution under section 12AA, was granted provisional approval under section 80G(5)(iv). Assessee thereafter applied for final approval under section 80G(5)(iii). Application is rejected by Commissioner (E) on ground that time limit prescribed for making an application for final approval was at least six months prior to expiry of period of provisional approval or within six months of commencement of its activities, which-ever is earlier and since time period for making application mentioned in section 80G(5)(iii) had already expired, assessee could not be granted final registration under section 80G(5). On appeal the Tribunal held that after grant of provisional approval, application could not be rejected on ground that institution has already commenced its activities even prior to grant of provisional registration and date of commencement of activity will be counted when an activity is undertaken after grant of provisional registration either under clause (i) or clause (iv) to first proviso to section 80G(5). Accordingly the application filed by assessee being within limitation period, order of Commissioner (E) is set aside. CIT(E) is directed to decide the application for final registration within three months of receipt copy of order.
Pranab Micro Services Federation v. CIT (2024) 206 ITD 337 (Kol) (Trib.)

S. 80G: Donation-Delay in filing application-Bona fide belief-Delay of 178 days-Delay is condoned-Matter is remanded to pass the order in accordance with law. [S. 80G(5)] 1229

Assessee-trust is allowed provisional registration under section 80G(5). Assessee-trust applied for regular approval which was rejected on ground that application for registration had been filed beyond statutory period of six months from commencement of charitable activities. On appeal it was con-tended that the assessee-trust was under bona fide belief that it had applied for regular approval well within time limit from commencement of its activities. The Tribunal condoned the delay of 178 days in filing of application under section 80G(5) and directed CIT(E) to reconsider and pass an order in accordance with law.
N J Charitable Foundation v. CIT (2024) 206 ITD 486 (Surat) (Trib.)

1230 **S. 80G: Donation-Time line for filing Form no 10A for recognisation under section 12A is extended up to 30-9-2023-10AB for renewal of approval/recognition/registration under clause (iii) of first proviso to section 80G also. [S. 12A,80G(5), Form No 10A, 10AB]**

Assessee-trust was granted provisional approval under clause (iv) of first proviso to section 80G(5) for period commencing 23-9-2021 to assessment year 2024-25. Assessee filed application in Form No. 10AB on 17-3-2023 which was beyond time limit prescribed under clause (iii) of first proviso to section 80G(5). Commissioner (E) rejected application holding that time-limit prescribed to file said Form 10AB was mandatory and he did not have power to condone delay.

On appeal to Tribunal held that CBDT Circular No. 6 of 2023 dated 24-5-2023 had extended time-limit to file forms for registration under section 12A and for recognition under section 80G up to 30-9-2023 but same was not extended to Form No. 10AB for renewal of recognition. Therefore time-line prescribed under clause (iii) of first proviso to section 80G(5) should be treated as directory and not mandatory especially considering transitional nature of amendment as brought out by Taxation of other laws (relaxation and amendment of certain provisions) Act 2020 for bringing new regime. Intention of CBDT in its circular clearly reflects their mind that once timeline prescribed for filing Form No. 10A for recognition under section 12A had been extended up to 30-9-2023, same may be treated as extended for forms namely Form No. 10AB for renewal of approval/recognition/registration under clause (iii) of first proviso to section 80G also. Matter is remanded back to file of Commissioner (E) for re-deciding issue on merits as per law.

CIT-1982 Charitable Trust v. ITO (2024) 112 ITR 546 / 206 ITD 543 (Chennai) (Trib.)

Madurai Agri Business Incubation Forum v. CIT(E) (2024) 112 ITR 546 / 206 ITD 543 (Chennai) (Trib.)

Shri Ramajayam Charitable Trust v. ITO 2024) 112 ITR 546 / 206 ITD 543 (Chennai) (Trib.)

1231 **S. 80G: Donation-Form 10AB for grant of final registration under section 80G(5) on 4-2-2023 i.e. within extended timeline provided by CBDT Circular No. 6/2023 dated 24-5-2023 with respect to final registration of Trust under section 12A in Form 10AB i.e. 30-9-2023-Matter is remanded to file of Commissioner (E) for redeciding issue of grant of final registration under section 80G(5), on merits, as per law. [S. 80G(5),Form No 10AB]**

Assessee-trust filed application in Form No. 10AB for grant of final registration under section 80G(5). Commissioner (E) held that assessee was re-quired to file application in Form 10AB on or before 30-9-2022, but it had filed Form 10AB, under section 80G(5) on 4-2-2023 and, thus, application in Form No.,10AB under section 80G(5) had not been filed within time limit prescribed therein and, therefore, rejected as non-maintainable. Tribunal held that the timeline prescribed under clause (iii) of first proviso to section 80G(5) should be treated as directory and not mandatory and that intention of CBDT in its circular clearly reflects their mind that once timeline prescribed for filing Form No. 10AB for recognition under section 12A has been extended up to 30-09-2023, same may be treated as extended for forms, namely,Form No. 10AB for renewal of approval/

recognition/registration under clause (iii) of first proviso to section 80G. Since assessee had filed Form 10AB for grant of final registration under section 80G on 4-2-2023, i. e., within extended timeline provided with respect to final registration of trust under section 12A in Form 10AB, i.e., 30-9-2023, matter is remanded to file of Commissioner (E) for re-deciding issue of grant of final registration under section 80G(5), on merits, as per law. Followed *CIT-1982 Charitable Trust v. ITO (E)(2024) 160 taxmann.com 457 (Chennai)(Trib)*
Adani Education Foundation v. CIT (2024) 206 ITD 674 (Ahd)(Trib.)

S. 80G: Donation-Objects to provide education, research and training, etc. -Expenditure incurred by it were not found to be religious in nature, it is eligible for approval under section 80G(5). [S. 12AA, 80G(5)(vi)] 1232
Assessee-society is engaged in religious and charitable activities. It was granted registration under section 12AA. It was also granted provisional approval. It applied for regular approval under section 80G(5)(vi). Commissioner (E) rejected application for regular approval on grounds that objects of assessee were religious in nature and expenses incurred during last three years also exceeded 5 per cent of total income. Tribunal held that since assessee-society was formed with objects to provide education, research and training, etc. and expenditure incurred by it were not found to be religious in nature and Commissioner (E) had not clarified which were those expenses which exceeded 5 per cent of total income and how said expenses were religious in nature. Tribunal held that the assessee-society is eligible for grant of approval under section 80G(5).
Sadhumargi Shantkranti Jain v. CIT (2024) 205 ITD 358 (Raipur) (Trib.)

S. 80G: Donation-Contribution to prime minister's relief fund-Part of legal compliance of corporate social responsibility (CSR)-Finance Act, 2014 mandated that CSR expenditure shall not be allowed as business expenditure under section 37(1)-No deduction under section 80G is allowable. [S. 37(1)] 1233
Assessee as a part of legal compliance of corporate social responsibility (CSR) contributed a certain amount to prime minister's relief fund and united way of Mumbai and claimed deduction of same under section 80G. The Assessing Officer disallowed the claim which is affirmed by the CIT(A). On appeal the Tribunal held that since Finance Act, 2014 mandated that CSR expenditure shall not be allowed as business expenditure under section 37(1) and also clarified that expenditure on CSR did not form part of business expenditure, no deduction under section 80G is allowable on amount contributed for purpose of CSR. (AY. 2017-18)
Agilent Technologies (International) (P.) Ltd. v. NFAC (2024) 205 ITD 551 (Delhi) (Trib.)

S. 80G: Donation-Object-Religious nature-Rejection of application without pointing out any specific object in trust deed cannot be treated as religious in nature-Matter was to be remanded back for de novo consideration. [S. 80G(5), Form No 10AB] 1234
Assessee-trust filed application for approval of trust under section 80G(5). Commissioner (E) rejected application of assessee on ground that assessee had mentioned in Form No. 10AB that one of its objects is religious in nature. Assessee submitted that there was

a mistake in Form No. 10AB where it had selected one of objects as religious' object, inadvertently. Further, assessee also submitted that no expenditure towards religious activities was incurred by trust during previous year under consideration. Tribunal held that since Commissioner (E) had summarily rejected application without analyzing facts of assessee's case and without even specifying which of objects of assessee-trust, as per trust deed submitted before him, was religious in nature, matter is restored to file of Commissioner (E) for de novo consideration.
Swaminarayan Bhaktidham Dwarka Charitable Trust v. CIT (2024) 205 ITD 515 (Rajkot) (Trib.)

1235 **S. 80G: Donation-Rejection of application without any specific observations as to whether less than 5 per cent of total income had been spent by assessee towards religious purposes-Matter is remanded back for de novo consideration. [S. 80G(5)]**
Assessee, a charitable trust, filed application for approval under section 80G(5). Commissioner (E) rejected application on ground that two objects of assessee were religious in nature. On appeal the Tribunal held that Commissioner (E) had relied upon only two out of ten objects to show that the assessee was a religious trust and he had not made any specific observations as to whether less than 5 per cent of total income had been spent by assessee towards religious purposes. On facts, matter is restored to file of Commissioner (E) for analyzing whether less than 5 per cent of total in-come had been incurred by assessee towards religious activity. Matter remanded.
Jay Mataji Charitable Trust v. CIT (2024) 205 ITD 503 (Rajkot) (Trib.)

1236 **S. 80G: Donation-Approval under sub-section (5)of S. 80G - Third proviso to section 80G(5) was applicable only to newly constructed trust and not to old trust - delay in filing Form No. 10AB is condoned-Matter is remanded. [S. 80G(5), Form No 10AB]**
Assessee-trust is registered on 29-11-2001 and commenced its activities from year 2001. It had been granted provisional approval in Form No. 10AC on 15-8-2022 under clause (iv) of first proviso to sub-section (5) of section 80G for period commencing from 15-8-2022 to assessment year 2025-26. It filed an application in Form No. 10AB for approval under clause (iii) of first proviso to sub-section (5) of section 80G on 24-2-2023. Commissioner (E) held that since assessee got provisional approval under section 80G(5), it was required to file application in Form No. 10AB within time period of at least six months prior to expiry of period of provisional approval or within six months of commencement of its activities, whichever was ear-lier, as stated in clause (iii) of third proviso to sub-section (5) of section 80G and having noted that assessee had not filed application within time limit rejected same as not maintainable and also cancelled provisional approval granted in Form No. 10AC. On appeal the Tribunal held that in view of judicial precedent on subject that phrase 'whichever is earlier' used in clause (iii) of third proviso to section 80G(5) was applicable only to newly constructed trust and it does not deal with condonation of delay in case of old trust who made application before Commissioner (E) very late, delay in filing Form No. 10AB deserved to be condoned. Matter is remitted back to Commissioner (E) to decide application in accordance with law.
Vananchal Kelavani Trust v. CIT (2024) 205 ITD 619 (Surat) (Trib.)

S. 80G: Donation-Trust registered under section 12A-Providing charitable activities-Denial of approval under section 80G(5) is not justified. [S. 80G(5), Companies Act, 2013, S. 8] 1237

Assessee, a company registered under section 8 of Companies Act, 2013, and granted registration under section 12A, had applied for approval under section 80G for its charitable activities. Commissioner rejected application, stating that assessee did not provide sufficient details about share transactions and documentary evidence of charitable activities. On appeal the Tribunal held that the assessee had provided substantial documentation proving its genuine charitable efforts, including scholarships, donations, and shares received as contributions, approval under section 80G is directed to be granted. (AY. 2023-24)

Olive Development Foundation v. CIT (2024) 204 ITD 12 (Mum) (Trib.)

S. 80G: Donation-Registration-Denial of approval-Not obtained in the past-Activities were commenced in the year 1984-Application cannot be rejected as treated as time barred. [S. 12AB, 80G(5)Form No. 10AD] 1238

Assessee-trust was engaged in charitable activities since 1984. It was granted provisional approval under section 80G(5) for three years from 19-1-2023 to 2025-26. Assessee immediately within a week made an application in Form 10AD for final approval on 24-1-2023. However, said application was rejected by Commissioner (E) on ground that application was not filed within extended period of limitation which was up to 30-9-2022 as per CBDT Circular No. 6/2023, dated 24-5-2023. On appeal the Tribunal held that assessee never obtained approval of their fund in past, though their activities commenced in year 1984, so application of assessee was not to be treated as time barred. For obtaining approval under section 80G, primary condition was to first avail registration under section 12AB, which assessee had already been allowed. Since Commissioner (E) had not examined other requisite conditions for approval of fund under section 80G and dismissed application in limine, therefore, application of assessee was to be restored back to file of Commissioner (E) to examine other required conditions and pass order in accordance with law. Matter remanded.

Navsari Surat Aththavisi Modh Chaturvedi Brahmin Ghyati Samast v. CIT (2024) 204 ITD 537 (Surat) (Trib.)

S. 80G: Donation-Education-Only one object-Application by an inadvertent error, it had mentioned all three objects of trust deed-Matter remanded back for fresh adjudication. [S. 10(23C)(vi), 80G, Form No 10AB, 10AC] 1239

Assessee-trust filed an application in Form no. 10AB seeking approval under section 80G. CIT (E) rejected application on ground that assessee had obtained approval under section 10(23C)(vi) with only one object i.e. 'education' but while applying for approval under section 80G, assessee had added two more objects which were relief to poor and medical relief without any verification or mention of same in trust deed. On appeal the Tribunal held that although main objects of assessee as per trust deed were relief to poor, education and medical relief but assessee had amended trust deed and deleted two objects i. e., relief to poor and medical relief and retained only one object of 'education'. As per amended deed, main object was only 'education' as stated in application filed under section 10(23C)(vi) and in Form no. 10AC issued by Principal Commissioner. By

an inadvertent error, assessee had referred to all objects including objects deleted by way of amended deed. CIT(E) ought to have considered application filed by assessee in light of Form No. 10AC issued by Pr. Commissioner. However, since CIT(E) rejected application of assessee without considering amended deed, matter was to be remanded back to him for fresh adjudication.
Thirumurugan Kalvi Arakkattalai v. CIT (2024) 204 ITD 543 (Chennai) (Trib.)

1240 **80G: Donation-Denial of final approval-Due to technical reason-Mentioning of wrong clause Rectifiable mistake. [S. 12A, 80G (5)(vi)]**
The CIT(E) denied the application for final approval u/s 80G of the Act on the ground that the Assessee out of inadvertence had mentioned another Clause. On appeal the Tribunal observed that the same was not an illegality but rather the same was a rectifiable mistake. The Tribunal held that instead of getting the application withdrawn, ld. CIT (Exemption) was supposed to give opportunity to the Assessee to rectify the mistake i. e. the mentioning of the appropriate Clause. CIT (E) even could have suo-moto passed an order treating the said application under the relevant 'Clause-iii' of Section 80G (5) of the Act. Appeal allowed.
Vivekananda Mission Asram v. CIT [2024] 109 ITR 22(SN) (Kol) (Trib)

1241 **S. 80G: Donation-Denial of approval is held to be not justified. [S. 12A, Form No. 10AB, Companies Act, 2013, S. 8]**
The assessee is a company registered under section 8 of the Companies Act involved in charitable activities. The assessee filed an application for approval under section 80G in form 10AB. The application was rejected on the grounds that assessee has not furnished details of transaction of charitable activities. On appeal the Tribunal held that the Assessee has placed various documentary evidences for various charitable activities hence denial of approval is held to be not justified. (AY. 2023-24)
Olive development Foundation v. CIT (2024) 204 ITD 12 (Mum)(Trib)

1242 **S. 80G: Donation-Within six months of commencement of its activities used in clause (iii) of first proviso to section 80G(5) would apply to those trusts which had not started charitable activities at time of obtaining provisional registration and not for those trusts which had already started charitable activities before obtaining provisional registration-Matter remanded for de novo adjudication. [S. 80G(5), Form No. 10AB]**
Assessee-company with charitable objects was incorporated on 17-2-2020. It received provisional approval under section 80G(5) on 1-12-2022. It commenced its activities on 3-1-2023. It filed application in Form No. 10AB for permanent registration under section 80G(5) on 30-9-2023. Commissioner (E) rejected application on ground that it was not filed within six months of commencement of activities and was beyond time permitted in section 80G(5). On appeal the Tribunal held that Words 'within six months of commencement of its activities' used in clause (iii) of first proviso to sec-ion 80G(5) had to be interpreted that they applied for those trusts/institutions which had not started charitable activities at time of obtaining provisional registration and not for those trusts/ institutions which had already started charitable activities before obtaining provisional registration. Assessee had applied for registration within time allowed under clause (iii)

of first proviso to section 80G(5). Order of Commissioner (E) is be set aside for de novo adjudication.
Rajasthan Export Promotion Council v. CIT (2024) 208 ITD 497 (Jaipur) (Trib.)

S. 80G: Donation-Provisional approval –Commencement of activities in 2002-Entitle for final approval and there is no bar for making fresh application. [S. 80G(5)(iv)] 1243
Assessee applied for provisional approval under section 80G(5)(iv) and same was granted vide order dated 28-6-2022. Thereafter, assessee applied for final approval under section 80G(5)(iii). Commissioner (E) rejected application on ground that assessee had already commenced its activities in 2002 and, thus, time period for making application had already expired. On appeal the Tribunal held that since provisional approval had been granted to assessee-institution from 28-06-2022 to assessment year 2025-26, assessee-trust is entitled to apply for final approval and there was no bar to institution for making such application.
North Eastern Social Research Centre v. CIT (2024) 208 ITD 664 (Kol) (Trib.)

S. 80G: Donation-Rejection of application-Pendency of fresh application-Appeal is dismissed as infructuous. [S. 80G(5)(viii), Form No 10AB] 1244
Assessee is an old trust having commenced its activities in year 2010. It sought approval under section 80G(5)(iii) by filing Form No. 10AB on 25-9-2023. Commissioner (E) rejected application on ground that assessee had violated mandatory timelines as statutorily provided. Meanwhile CBDT vide Circular No. 7/2024 [F. No. 173/25/2024-ITA-I], dated 25-4-2024 has provided opportunity for assessee to avail fresh filing of application in Form No. 10AB up to 30-6-2024. As per the said circular that in cases where any trust, institution or fund has already made an application in Form No. 10AB, and where Principal Commissioner or Commissioner has passed an order rejecting such application, on or before issuance of this Circular, solely on account of fact that application was furnished after due date or that application has been furnished under wrong section code, it may furnish a fresh application in Form No. 10AB within extended time provided i.e. 30-6-2024. Tribunal held that since the assessee had filed a fresh application in Form No. 10AB and same was pending adjudication before Commissioner (Ex), appeal filed by assessee is academic, hence, infructuous. Matter remanded.
Gedee Medical Foundation v. CIT (2024) 208 ITD 344 (Chennai) (Trib.)

S. 80GGA : Donation-Scientific Research-Rural development-At the time of making of donation the charitable trust was duly approved under section 35AC-Subsequent withdrawal-Denial of deduction is held to be not valid. [S. 35AC(2), 80GGA(2)(bb), 147, 148] 1245
The assessment was reopened on the ground that the donations were made to certain charitable trust which had accepted donations in cheque and later returned in cash to donor after deducting commission. The reassessment proceeding was initiated and the claim under section 80GGA was disallowed. CIT(A) affirmed the order of the Assessing Officer. On appeal the Tribunal held that there is no material on record to dispute the claim of the assessee that at the time of making of donation to charitable trust was duly approved u/s 35AC of the Act. Accordingly the denial of the claim was set aside. (AY. 2010-11)
Rabi Narayan Bastia v. DCIT [2024] 205 ITD 114 /227 TTJ 33(UO) (Mum) (Trib)

1246 **S. 80GGC : Contribution-Any person-Political parties-Rastriya Komi Ekta party-Unrecognised political party-No certificate is furnished in the form of verification of list of documents, etc-Genuineness of the donation is not proved-Not allowable as deduction. [S. 133(6)]**

Tribunal held that the assessee has not even provided the details of his bank account substantiating the donation. Moreover, it was found that the said political party has not furnished their annual audited accounts and contribution report to Chief Election Officer. As the genuineness of the donation is not proved, contribution is rightly disallowed by the Assessing Officer. (AY. 2016-17)

Jayeshkumar Gopalbhai Akbari v. DCIT (2024) 229 TTJ 449 / 237 DTR 113 / 162 taxmann.com 395 (Surat)(Trib)

1247 **S. 80HHC : Export business – When certain profit is to be excluded from claim of deduction under sections 80HH, 80I and 80HHC, it is not gross profit but net thereof, that is, gross profit minus expenditure incurred for earning such profit which should be excluded – Tax effect is below threshold limits – SLP of Revenue is dismissed. [S. 80HH, 80I, 268A, Art. 136]**

High Court held that when certain profit is to be excluded from the claim of deduction under sections 80HH, 80I and 80HHC, it is not the gross profit but the net profit (i.e., gross profit minus expenditure incurred to earn such profit) that should be excluded. SLP of Revenue is dismissed due to tax effect being below threshold limits. (AY. 1998-99)

CIT v. Nirma Ltd. (2024) 299 Taxman 180 (SC)

Editorial : CIT v. Nirma Ltd (2015) 229 Taxman 535 (Guj)(HC)

1248 **S. 80HHC : Export business-Interest income-Failure to establish nexus with export business-Order of Tribunal denying the exemption is affirmed by High Court-SLP of assessee dismissed. [Art. 136]**

Assessee, engaged in export business claimed benefit of deduction as per computation provided in clause (baa) to Explanation to section 80HHC in respect of certain interest income. Tribunal held that since assessee failed to establish that interest earned on deposit or advance was income from export business, benefit of deduction as per computation provided in clause (baa) to Explanation to section 80HHC could not be made available to assessee On appeal, High Court upheld view taken by Tribunal. SLP of assessee is dismissed in the Apex Court.

Kaushal Kishore Agarwal v. ITO (2024) 297 Taxman 381/463 ITR 688 (SC)

Editorial: Kaushal Kishore Agarwal v. ITO (2024) 159 taxmann.com 248 /463 ITR 683 (Raj)(HC)

1249 **S. 80HHC : Export business – Manufacturing and letting out vacuum insulated tanks and related products – Lease rent – Business income – Eligible for deduction – Deduction not to be allowed on profits to extent deduction already allowed under section 80-IA – Tribunal holds that lease rental income qualifies as business income and is eligible for deduction under section 80HHC, but deduction under section 80HHC is not allowable on such income to the extent deduction is already granted under section 80-IA in view of section 80-IA(9). [S. 80-IA(9)]**

Assessee, engaged in manufacturing vacuum insulated tanks, earned lease rent by

letting out such tanks. Following earlier Tribunal decision in assessee's own case for AYs 1997-98 to 1999-2000, deduction was allowed under section 80HHC on lease rent treating it as business income. However, as per section 80-IA(9), where deduction has already been allowed under section 80-IA, no further deduction shall be allowed under any other section, including section 80HHC, on such income. Accordingly, claim of deduction under section 80HHC was restricted to the extent of profits already claimed under section 80-IA. (AYs. 2000-01, 2002-03, 2003-04, 2004-05)
Inox India Ltd. v. Dy. CIT (2024) 116 ITR 53 (SN)/ 169 taxmann.com 118 (Ahd)(Trib)

S. 80IA: Industrial undertakings-Enterprises engaged in infrastructure development-Generation of power-Interest on Bonds issued by Grid Corporation in lieu of unpaid energy bills-Eligible for deduction-Order of High Court affirmed-SLP of Revenue is dismissed. [S. 80IA (iv)(a), 80IB, 80IC, Art. 136] 1250

Allowing the appeal the Court held that the assessee had no other source of income except through generation and sale of power. All its receipts and expenditure related to a single activity of power generation. The interest received from the bonds issued by the Grid Corporation had a direct nexus with its essential business activity as they are issued in lieu of the unpaid electricity bills and, therefore, was income derived from interest is eligible for deduction. Order of High Court is affirmed. SLP of Revenue is dismissed. (AY. 2002-03, 2003-04, 2007-08 to 2009-10)
ACIT v. Orissa Power Generation Corporation Ltd. (2024) 298 Taxman 273 (SC)
Editorial : Orissa Power Generation Corporation Ltd v. ACIT (2022) 138 taxmann.com 341 / (2023) 456 ITR 495 (Orissa)(HC)

S. 80IA: Industrial undertakings-Enterprises engaged in infrastructure development-Tribunal is right in coming to the conclusion that the permission obtained from the customs authority by the assessee vide a letter dt. 1st February 2013 is deemed to be the approval granted by the competent authority of the Central Government-Entitled to deduction under S. 80IA(4)(i). [S. 80IA(4)(i), 260A] 1251

Dismissing the appeal of the Revenue the Court held that the object behind the introduction of the provision namely S. 80-IA. While interpreting the scope of the condition (b) of sub-s. (4) of S. 80-IA, rigid interpretation of the provision as canvassed by the Revenue would only result in the assessees involved in genuine infrastructure development projects for and on behalf of the Government or local authorities would be denied the deduction merely on the ground that the State Government had created a nodal agency for working out of the finer details and nitty-gritty of such infra-structure developments. That the purpose of creating such nodal agencies as well as legislative intent of granting deduction to the assessee engaged in developing maintaining, or operating any infrastructure projects for Central Government or State Government or local statutory authority would frustrate. Undoubtedly the benefit of deduction provided for under S. 80-IA(4) is for a beneficial purpose, the purpose being to promote industrial undertakings or enterprises engaged in infrastructural developments etc. Therefore, the interpretation to be given to the said provision should advance the object for which the provision was introduced and not to frustrate it. (AY. 2015-16, 2016-17)
PCIT v. Bothra Shipping Services (P) Ltd (2024) 166 taxmann.com 608/341 CTR 585 /243 DTR 432 / 8 NYPCTR 1280 (Cal)(HC)

1252 **S. 80IA: Industrial undertakings-Enterprises engaged in infrastructure development-Manufacture or production of Gitti from sand stone blocks-Amounts to manufacture or production. [S. 80IB, 260A]**

The assessee claimed deduction under section 80-IA of the Income-tax Act, 1961 on its production of gitti from sand stone blocks. The Assessing Officer rejected the claim on the ground that such activity could not be categorized as "manufacturing" or "production". The Commissioner (Appeals) allowed the assessee's appeal. On appeal by the Department, the Tribunal reversed his order. On the appeal the Court held that the expression production used under section 80-IB, in which expressions manufacture and production both were used were synonyms with each other or the word production had a wider meaning than manufacture so as to include within the preview, an activity, which might not amount to manufacture but might still amount to production. Appeal of the assessee is allowed. Order of Tribunal is set aside. (AY. 2003-04)

Shakuntala Devi (Smt.) v. CIT (2024)467 ITR 194 / 166 taxmann.com 601 (Raj)(HC)

1253 **S. 80IA: Industrial undertakings-Enterprises engaged in infrastructure development-Telecommunications Services-Expansion of business by acquiring international and national long distance licences-Entitled to deduction. [S. 80IA(4)(ii)]**

Held, dismissing the appeal, that no new undertaking had come into existence after March 31, 2005. The assessee had provided internet services from the assessment year 2002-03 and continued to provide internet services. The only difference was that it had expanded its business by adding to it a niche consumer base on acquisition of the international long distance and national long distance licences in the year 2008. The attempt of the Assessing Officer to excise a portion of the benefit, could not pass muster up-on perusal of the plain language of section 80-IA(4)(ii). The Tribunal did not err in deleting the disallowance made under section 80-IA. No substantial question of law. (AY. 2011-12)

PCIT v. Verizon Communications India Pvt. Ltd. (2024)466 ITR 707 (Delhi)(HC)

1254 **S. 80IA : Infrastructure undertakings – Power plant – Market value for internal supply – State Electricity Board rates to be used**

Tribunal held that for internal transfer of power from assessee's power plant, market value should be computed based on the rate at which the State Electricity Board sells to industrial consumers, and not the lower rate at which power is sold to the grid. (AY. 2003–04)

Hindalco Industries Ltd. v. Dy. CIT (2024)114 ITR 502 (Mum)(Trib)

1255 **S. 80IA : Industrial undertakings – Enterprises engaged in infra-structure development – Adjustment of loss of other units – Separate books of account – Independent computation of profits – Adjustment of loss of other units not justified – Deduction cannot be denied where eligible units have shown profits and maintained separate accounts – Filing of individual Form No. 10CCB supports claim. [S. 80-IA(5), Form No. 10CCB]**

Held that the assessee having shown profits from its eligible units and maintained separate books of account for each undertaking, deduction under section 80-IA cannot be denied by setting off losses from other units against the profits of eligible units. In terms of section 80-IA(5), each eligible undertaking is to be treated as a separate and

independent unit, and the profit or loss is to be computed on a standalone basis. The assessee also filed individual audit reports in Form No. 10CCB for each unit, further supporting the independent computation. Hence, adjustment of losses from non-eligible or other units is not justified. (AY. 2020–21)
JCIT v. Sonu Handicrafts (2024) 229 TTJ 52 (UO) (Jodhpur)(Trib)

S. 80IA: Industrial undertakings-Qua undertaking and not Qua assessee-Enterprises engaged in infrastructure development-Entire undertaking which developed the industrial park has been transferred-Transfer of undertaking-of Transferee is entitled to deduction-Circular No 799 dt 14-9-1999-Interest on fixed deposits-Not eligible deduction u/s 80IA-Assessable as income from other sources-Interest expenditure for earning of interest is allowable as deduction. [S. 56 57(iii), 80IA(4)(iii), 80IA(12)] 1256
The AO disallowed the disallowance under section 80IA(4)(iii) of the Act. CIT(A) allowed the claim. On appeal the Tribunal held that notified under-taking and industrial park was transferred to the assessee partnership firm as capital contribution. As per the provisions of S. 80IA(12), if the under-taking is transferred and the said transfer is not by amalgamation or demerger, the benefit is available to the transferee undertaking. Transfer contemplated under S. 80IA(4)(iii) is qua the undertaking and not qua the assessee. As per para 9(4) of the Industrial Park Scheme, 2002 and para 10 of CBDT notification, if there is a transfer of the undertaking, the transferor and transferee should jointly intimate to the DIPP which is duly com-plied with. Therefore the transferee undertaking to claim deduction under s. 80-IA(4)(iii) for the remaining period. Proviso to S. 80-IA(12) applies only when there is a transfer of operation and maintenance of industrial park. On the facts of the case the entire undertaking which developed the industrial park has been transferred to the assessee and not merely the operation and maintenance. Order of CIT(A) is affirmed. Interest on fixed deposits is not eligible deduction u/s 80IA. Interest income is assessable as in-come from other sources, however the interest expenditure for earning of interest is allowable as deduction. (AY. 2012-13)
Dy. CIT v. Olympia Tech Park (Chennai) (P) Ltd (2024) 227 TTJ 844 234 DTR 169 / 38 NYPTTJ 27 (Chennai) (Trib)

S. 80IA: Industrial undertakings-Enterprises engaged in infrastructure development-Captive power plant-Supply of power to own unit-Sale of small portion to State grid corporation-Rate to be adopted-Market value-Rate at which State Electricity Board supplies to industrial consumers. [S. 80IA(8)] 1257
Held that in the concept of "open market "as used in the Explanation to section 80IA(8), market value in relation to any goods meant the sale price that such goods would ordinarily fetch in the open market. The market value of the power supplied by the State Electricity Board to industrial consumers should be construed to be the market value of electricity. It should not be compared with the rate at which power was sold to the State Electricity Board since the rate of power to a supplier could not be the market rate of power sold to a consumer in the open market. As a result, the rate charged by the State Electricity Board to its industrial consumer should be taken as the market value for computing the deduction under section 80IA and, consequently, also the transfer price for the power supplied to its aluminium unit by the assessee. (AY. 2003-04)
Hindalco Industries Ltd. v. Dy. CIT (2024)114 ITR 502 (Mum)(Trib)

1258 **S. 80IA: Industrial undertakings-Enterprises engaged in infrastructure development-Market value of goods-Generating power from windmills for captive consumption-Initial year-Electricity purchased from Tamil Nadu Electricity Board and other Private power producers is proper.**

Held, that the rate at which power is supplied to a supplier could not be the market rate of electricity purchased by a consumer in the open market. The rate at which the State Electricity Board supplied electricity to industrial consumers would have to be taken as the market value for computing deduction under section 80-IA of the Act. The assessee had adopted the price at Rs. 5. 60 per unit which was arrived at on the total charges paid by the assessee towards electricity purchased from the Tamil Nadu Electricity Board and other private power producers. Further, the Department had allowed the claim of the assessee for computing deduction under section 80-IA of the Act for the initial year, assessment year 2011-12, and a subsequent assessment year, 2020-21. Order of CIT(A) is affirmed. (AY. 2015-16, 2017-18, 2018-19)

ITO v. SJLT Textiles (2024) 112 ITR 37 (SN) (Chennai)(Trib)

1259 **S. 80IA: Industrial undertakings-Infrastructure facility-Search and seizure-claim though not claimed in the original return filed before search-Assessee is entitled to the deduction. [S. 80IA(4), 139(1), 139(5), 153A]**

The assessee is within its rights to claim deductions u/s. 80-IA(4) in its re-turns filed in response to notices issued u/s. 153A in respect of pending assessment proceedings for the assessment years 2017-18, 2018-19, and 2019-20 although such deductions were not made in the original returns filed u/s. 139(1) of the Act (before search) and such claims were also not raised vide revised returns filed u/s. 139(5) of the Act, the assessee is entitled to the deduction for the year. (AY. 2020-21)

CIT (Dy.) v. ABCI Infrastructure P. Ltd. (2024) 111 ITR 10 (SN) (Gauhati)(Trib.)

1260 **S. 80IA: Industrial undertakings-Enterprises engaged in infrastructure development-Developer-Contractor-Developing road, bridges etc-Matter is restored back to Commissioner (Appeals) for fresh adjudication. [S. 80IA(4)]**

Assessee is engaged in business of developing road, bridges etc., i.e. infrastructure facilities after entering into agreement with State/Central Government. It had filed its return of income claiming deduction under section 80-IA. Assessing Officer denied deduction under section 80-IA(4) by holding assessee to be contractor. On appeal Commissioner (Appeals) held that the assessee could not be termed as a contractor and since assessee had performed all tasks which was performed by developer, assessee is to be allowed deduction under section 80-IA. On appeal the Tribunal held that Commissioner (Appeals) while granting relief to assessee did not discuss elaborately about eligibility or otherwise of assessee to deduction under section 80-IA(4) vis-à-vis specific work orders executed by assessee. Even tender documents, agreements with Government for executing work, PERT chart, financial statements, men, material and machines deployed, roles and responsibilities performed by assessee, details of deployment of funds, details of statutory clearances obtained, penal provisions in agreements etc. were not provided by assessee. Matter is be restored back to Commissioner (Appeals) for fresh adjudication after making detailed analysis of all specific work executed by assessee in which assessee had claimed

that it acted as developer and claimed to be eligible for deduction under section 80-IA(4) of the Act. (AY. 2007-08, 2008-09)
ACIT (OSD) v. M. S. Khurana Engineering Ltd. (2024) 206 ITD 741 (Ahd) (Trib.)

S. 80IA: Industrial undertakings-Enterprises engaged in infrastructure development-Failure to file Form No 10CCB-Order of CIT(A) allowing the claim is set a side with the direction to pass speaking order. [S. 250, Form No 10CCB] 1261
Tribunal held that since Commissioner (Appeals) had not analysed relevant judicial precedents on subject and had simply accepted version of assessee without independently applying his mind to facts of case the appeal is restored to file of Commissioner (Appeals) for de novo consideration. (AY. 2019-20)
ACIT v. Shreeji Shipping Services (India) Ltd. (2024) 205 ITD 509 (Rajkot) (Trib.)

S. 80IA: Industrial undertakings-Enterprises engaged in infrastructure development-No deduction is claimed-Disallowance cannot be made. [S. 80IA(7)] 1262
Held that when no deduction has been claimed no disallowance can be made. Order of CIT(A) is affirmed. (AY. 2018-19)
ACIT v. Chittorgarh Kota Tollway (P.) Ltd. (2024) 204 ITD 223 (Ahd) (Trib.)

S. 80IB: Industrial undertakings-Manufacture or production of Article or thing-Cutting and polishing of blocks mined into tiles-Manufacturing activity-Entitle to deduction. [S. 260A] 1263
Dismissing the appeal the Court held that considering the activity of cutting and polishing of tiles carried out by the assessee from the blocks mined and in view of the decision in *CIT v. Goverdhan Prasad (D. B. I. T. A. No. 299 of 2009 dated March 2, 2017),* the Tribunal was proper in granting the benefit of special deduction under section 80IB. No substantial question of law. (AY. 2003-04)
CIT v. World Wide Stone (2024)466 ITR 748 (Raj)(HC)

S. 80IB : Industrial undertakings-Services to buyers by way of repair and maintenance of moulds sold to them and charged job work charges for such services-No direct nexus with business activity of manufacture and sale of moulds-Not entitle to deduction. [S. 260A] 1264
During year, assessee-HUF had sold moulds and certain parts manufactured by it in its industrial undertaking. It also provided services to buyers by way of repair and maintenance of moulds sold to them and charged job work charges for such services-It claimed entire job work charges, which included receipt on account of sale of spare parts and repair and maintenance charges, as deduction under section 80-IB. Assessing Officer disallowed deduction under section 80IB. CIT(A) allowed the deduction. On appeal the Tribunal held that the assessee is entitle for deduction with respect of job work charges computed at 50 per cent. The remaining 50 percent on account of repair and maintenance charges was held to be not eligible. On appeal High Court affirmed the order of the Tribunal. (AY. 2005-06)
Rajesh Kumar Drolia (HUF) v. CIT (Central) (2024) 299 Taxman 296/ (2025) 343 CTR 619 (Cal.)(HC)

1265 **S. 80IB: Industrial undertakings-Income from sale of scraps and by-products-Directed to allow the deduction. [S. 80IC]**
Held that scrap and by-products are inextricably connected with the manufacturing activities carried on by the eligible units and, therefore, deduction under s. 80IB/ 80-IC is allowable in respect of sales value of scraps/by-products generated in the eligible units. (AY. 2005-06)
Hindustan Unilever Ltd. v. Dy. CIT (2024) 232 TTJ 861 / 38 NYPTTJ 1420 (Mum)(Trib)

1266 **S. 80IB: Industrial undertakings –Production of aluminium products-Allowable deduction.**
Held that claim under section 80IB per certificate in form 10CCB was to be allowed in full. (AY. 2003-04)
Hindalco Industries Ltd. v. Dy. CIT (2024)114 ITR 502 (Mum)(Trib)

1267 **S. 80IB: Industrial undertakings-Each well-Separate undertaking-Explanation inserted to Section 80IB(9) would operate with retrospective effect-Matter stayed by Supreme Court-Assessing Officer directed to decide issue in accordance with directions of Supreme Court. [S. 800IB(9)]**
Held, that the matter had been stayed by the Supreme Court and the Tribunal in the assessee's case for the assessment years 2001-02, 2002-03 and 2005-06 had refrained from adjudicating the issue whether or not the Explanation inserted by way of amendment under section 80IB(9) of the Act was retrospectively applicable. The Tribunal set aside the issue and directed the Assessing Officer to wait for the verdict of the Supreme Court and thereafter decide the issue accordingly in the light of the judgment of the Supreme Court. Therefore, since the issue whether each "well" would constitute a separate undertaking and hence eligible for deduction under section 80IB(9) was dependent on whether the Explanation inserted to section 80IB(9) would operate with retrospective effect or not, the Assessing Officer was to decide the issue in accordance with the directions of the Supreme Court. (AY. 2007-08, 2008-09)
Joshi Technologies International Inc. v. Asst. CIT (IT) (2024)109 ITR 70 (Ahd)(Trib)

1268 **S. 80IB(10) : Housing projects-Built up area less than 1000 sq. ft-Deduction claimed on basis of approved plans of BMC, occupancy certificate issued by BMC-High Court affirmed the order of Tribunal-SLP of revenue dismissed. [Art. 136]**
Assessee developed a residential project and thus claimed deduction in terms of section 80IB(10). Assessing Officer denied claim on ground that some of flats constructed in Tower 'A' of its housing project had exceeded area of 1000 sq. ft. as envisaged under section 80-IB(10). However, it was found that assessee was claiming deduction on basis of approved plans of BMC, occupancy certificate issued by BMC, possession letters and agreements for sale of flats entered into with individual buyers. As per approved plans of BMC all flats in 'A' wing of building were having built up area of less than 1000 sq. ft. and as per possession certificate issued to buyers of flats, buyers had been given possession separately for each of individual flats. There was no evidence on record to indicate that assessee had combined two or more flats. Completion certificate was issued by competent authority, which could not have been issued if there was any violation of approved plans by municipal authorities. High Court held that benefit of

deduction under section 80-IB(10) could not be denied. SLP filed by revenue against said impugned order of High Court is dismissed. (AY. 2009-10)
PCIT v. Vardhan Builders (2023) 155 taxmann.com 391/ (2024) 296 Taxman 1 (SC)
Editorial : PCIT v. Vardhan Builders (2023) 291 Taxman 45/ 456 ITR 310(Bom)(HC)

S. 80IB (10) : Housing projects-Project was sanctioned prior to 1-4-2005-Concept of built up area was introduced with effect from 1-4-2005 could not be applied retrospectively-Expression built up area would exclude balcony area-Order of Tribunal is affirmed-No substantial question of law. [S. 80IB(14), 260A] 1269

Assessee is engaged in development of a housing project and claimed deduction under section 80-IB(10). Assessing Officer denied the claim on ground that as per DVO's report available there was violation related to two row houses having built up area more than 1500 sq. ft.. CIT(A) affirmed the order of the Assessing Officer. On appeal Tribunal allowed the claim. On appeal the Court held that in cases similar to assessee, Supreme Court *CIT v. Sarkar Builders [2015] 232 Taxman 731/375 ITR 392 (SC)*, in held that, where position prior to 1-4-2005 was concerned, it was legitimate and permissible for assessee to claim deduction under section 80IB(10), as for such period (prior to 1-4-2005), concept of built-up area as inserted by clause (a) in section 80IB(14), which included inner measurement of residential unit at floor level, including projections and balconies, as increased by thickness of walls, but excluding common areas, shared with other residential units, could not be considered. Since in instant case project was sanctioned prior to 1-4-2005, concept of built up area introduced with effect from 1-4-2005 could not be applied retrospectively and thus, expression built up area would exclude balcony area. Order of Tribunal allowing the claim is affirmed. No substantial question of law, Followed, *CIT v. Sarkar Builders [2015] 232 Taxman 731/375 ITR 392 (SC)*, *CIT v. Tinnwala Industries [IT Appeal No. 3315 of 2010, dated 13-4-2012, CIT v. Veena Developers 2015 SCC OnLine SC 1959* (AY. 2006-07 to 2008-09)
PCIT v. G. K. Developers (2024) 300 Taxman 331 (Bom.)(HC)

S. 80IB(10) : Housing projects-Delay in audit-Order of Tribunal allowing the claim of the assessee is affirmed. [S. 80AC, 139(1)] 1270

Assessee, a statutory organization, filed its return of income under section 139(1) claiming certain deductions under section 80IB(10) of the Act. Assessing Officer rejected said claim on ground that since assessee had not filed its original return within period prescribed under section 139(1), it would not be entitled to said deductions in view of section 80AC of the Act. On appeal the claim was allowed by the CIT(A) and Tribunal. On appeal the Court held that the assessee had a reasonable and bona fide cause for not filing return of income within time permitted under section 139(1) of the Act. Once the assessee had been held entitled to claim specifically computed deductions, was not to be burdened with taxes which it was otherwise not liable to pay under law. (AY. 2006-07)
PCIT v. H. P. Housing & Urban Development Authority (HIMUDA) (2024) 297 Taxman 208/336 CTR 303 (HP)(HC)

1271 **S. 80IB(10) : Housing projects-The area of balconies open to sky is not to be considered as part of built-up area of a particular residential unit-Denial of exemption is not justified-Project completion method regularly followed cannot be rejected. [S. 145]**
Held that the area of balconies open to sky is not to be considered as part of built-up area of a particular residential unit, denial of exemption is not justified on the ground that built area exceeded 1000 sq. ft. The Tribunal also held that project completion method regularly followed cannot be rejected. (AY. 2012-13) (ITA No. 3569/ Del/ 2016 dt. 24-4-2024)
Shipra Estates Ltd & Jai Krishna Estate Developers Pvt Ltd v. ACIT (2024) BCAJ-July-P. 38 (Delhi)(Trib)

1272 **S. 80IB(10) : Housing projects-Claiming deduction in revised return-Matter remanded for reconsideration. [S. 139(1)]**
Held that claim of capital loss did not form part of the original return or the revised return, it could still be considered, if the relevant material was available on the records of, either the appellate authorities or, on remand, the Assessing Officer. The Tribunal found that the relevant material qua the claim made by the assessee under section 80IB(10) is placed on record by the assessee during the assessment proceedings ; therefore, the view of the Commissioner (Appeals) is upheld and the matter is directed for re-examination by the Assessing Officer. (AY. 2008-09 to 2010-11)
ACIT v. Balaji Hotels and Enterprises Ltd. (2024)114 ITR 213 /229 TTJ 567/239 DTR 189 (Chennai)(Trib)

1273 **S. 80IC : Special category States-Manufacture of pan masala (Mouth freshener)-Pan masala without any tobacco content will not fall within purview of Entry 1 of Part A of Thirteenth Schedule and assessee is entitled for deduction under section 80IC(2)(a)(i) read with section 80IC(3). [S. 80IC(2)(a), 80IC(3), 260A]**
Assessee established an unit in State of Sikkim in an area notified by Central Board of Direct Taxes by Notification F. No. 142/35/2003-TPL, dated 6-2-2024 under section 80-IC(2)(a) for manufacture of pan masala (mouth freshener) not containing any tobacco or catechu. It claimed deduction under section 80IC(2)(a). Assessing Officer denied deduction on grounds that process applied by assessee did not amount to manufacture and product did not find mention in Fourteenth Schedule. Commissioner (Appeals) held that process applied by assessee amounted to manufacture and assessee was entitled for deduction. Tribunal held that process applied by assessee was manufacture but product shall stand excluded for deduction in view of Part B of Thirteenth Schedule to Act. Since part A of thirteenth schedule was applicable for State of Sikkim and legislature had not included pan masala in Part A of Thirteenth Schedule, pan masala without any tobacco content will not fall within purview of Entry 1 of Part A of Thirteenth Schedule and assessee is entitled for deduction under section 80IC(2)(a)(i) read with section 80IC(3). (AY. 2007-08 to 2012-13)
Unicorn Industries v. PCIT (2024) 300 Taxman 347 / (2025) 475 ITR 47 (Cal.)(HC)

S. 80IC : Special category states-Manufacture of books-Eligible for deduction-Order of Tribunal is affirmed. [S. 260A] 1274

Assessee was engaged in business of printing and binding of books. It claimed deduction under section 80IC. Assessing Officer disallowed claim of assessee on ground that neither paper nor printed material reached eligible unit for printing, cutting and binding etc. and no manufacturing activity had actually taken place in said premises. Commissioner (Appeals) held that Assessing Officer had not disallowed deduction under section 80IC on ground of violation of prescribed conditions. He held that since assessee's claim of deduction under section 80IC in respect of publishing activity carried out from premise of eligible undertaking was found to be genuine, same was to be allowed. Tribunal affirmed the order of the CIT(A). On appeal High Court held that no substantial question of law. (AY. 2011-12, 2012-13)

PCIT v. Nirja Publishers & Printers (P.) Ltd. (2024) 297 Taxman 448 /466 ITR 646 (Delhi) (HC)

S. 80IC : Special category States-Entire production sold to firm-Not disputing the sale price-No mistakes in books of account-No diversion of profit to firm-Denial of exemption is not justified. [S. 80IC(3)(ii), 80IE] 1275

Held that there was no concrete evidence to come to the conclusion that there had been diversion of profits from the firm to the assessee. The Department had not challenged the sale price of the products sold by the firm to the assessee. Further, the Commissioner (Appeals) had observed that the products of the assessee involved substantial innovation whereas the products of the firm were generic. The Assessing Officer, who had not pointed out any mistake in the assessee's books of account, erred in concluding that there had been diversion of profits from the firms claiming exemption under sections 80IE and 80IC(3)(ii) (AY. 2009-10, 2010-11, 2011-12)

Intas Pharmaceuticals Ltd. v. ACIT (2024) 114 ITR 434 (Ahd)(Trib)

S. 80IC : Special category States-Gross profit from trade purchases with subsidiary not different to that from third parties-No evidence of shifting expenses to subsidiary. 1276

Held that the Commissioner (Appeals) had observed that the assessee made a gross profit of 48 per cent on products purchased for trading from its sister firm as compared to the gross profit of 46 per cent on trading of products purchased from third parties. Thus, the Assessing Officer's observation that some expenses were shifted from the hands of the firm to the assessee was not made out from the records. (AY. 2012-13)

Intas Pharmaceuticals Ltd. v. ACIT (2024)114 ITR 546 (Ahd)(Trib)

S. 80IC: Special category States-Eligible Profits-Disallowance of sales promotion expenses-Freebies-Enhancement of profits of eligible business-Directed to recompute eligible profits and allow deduction-Profit derived from sale of scrap-Eligible for deduction- [Central Board of Direct Taxes Circular No. 37 Of 2016, Dated 2-11-2016, S. 37(1)] 1277

The Hon'ble Mumbai Tribunal held that in the case of unabated or completed assessments under section 153A of the Income-tax Act, 1961, no additions can be made unless they are based on incriminating material found during the course of search under

section 132. Additions made merely on the basis of reappraisal of existing records or interpretations not supported by any seized material—such as disallowance of SEZ losses under section 115JB, scientific research expenses under section 35(2AB), or tax paid on behalf of employees—were deemed unsustainable. Allegations of over-invoicing of raw material purchases were rejected where no direct purchases from the implicated party (Reynolds Petro) were made by the assessee, and the statements relied upon referred to a sister concern. In cases involving bogus purchases, only the embedded profit element was held taxable, not the entire purchase amount. Disallowance of professional fees paid to ACIAL was deleted due to denial of cross-examination, violating principles of natural justice. The Tribunal also held that expenditure incurred by a pharmaceutical company on patient education camps, sponsorships, conference registration, printing, and CRM/sales promotion (where items were below ₹ 1000) was allowable under section 37(1), as these did not benefit doctors directly. However, expenses like hotel and travel for doctors and air tickets were disallowed being in violation of MCI Regulations. ESOP expenses were held allowable, following the Biocon ruling. Deduction under section 80-IC was allowed on scrap sales as per earlier precedents. Excise and interest subsidies were treated as capital receipts not includible in taxable or book profits. Forex translation reserve gains were also excluded from book profit under section 115JB. Thus, the Tribunal reiterated that in absence of incriminating material, additions in unabated assessments are beyond the scope of permissible reassessment under section 153A. (AY. 2009-10 to 2012-13, 2014-15)
IPCA Laboratories Ltd. v. Dy. CIT [2024] 161 taxmann.com 511 /113 ITR 53/230 TTJ 409 (Mum)(Trib.)

1278 **S. 80IC: Special category States-Delay in filing return-Mistake of Auditor-Delay Condoned-Fall in gross profit-Books of account not rejected-Addition is deleted. [S. 80AC, 139, 145]**
The auditor of the assessee-company had filed the balance-sheet with annexures, tax audit report and audit report under section 80-IC of the Act before the due date for filing the return, but had uploaded the return after the due date, despite the fact that digital signatures of the assessee were handed over to him much before the due date for filing the return. The late filing of return was not due to any fault of any of the officers of the assessee, but due to their tax consultants. The delay, supported by an affidavit and surrounding circumstances, was found to be beyond the Assessee's control. The Commissioner (Appeals) allowed the deduction, holding that Section 80AC's deadline could be relaxed as it is directory, not mandatory. The Tribunal upheld this view, confirming that all conditions under Section 80-IC were met, and the delay deserved to be condoned. The disallowance was rightly deleted. (AY. 2014-15)
Dy. CIT v. Symbiosis Pharmaceuticals P. Ltd. [2024] 164 taxmann.com 747/113 ITR 468 /228 TTJ 201 (Chd) (Trib.)

1279 **S. 80IC: Special category States-Fall in gross profit rate-Diversion of profits to subsidiary-May require scrutiny at the hands of the subsidiary under section 80IA (10) and not the Assessee. [S. 36(1)(va)S. 80IA(10)]**
The Hon'ble Chandigarh Tribunal held that disallowance under section 36(1)(va) for delayed deposit of employees' contributions to PF and ESIC is justified even if made

before the due date of filing the return, following the Supreme Court's decision in Checkmate Services. It further upheld the deletion of disallowance under section 36(1)(iii), where the assessee had advanced Rs. 90 lakhs to acquire office property from a lessor, holding it to be for business purposes, as substantiated by lease agreements, agreement to sell, and subsequent cancellation with recovery of the advance. The Tribunal affirmed that the advance had nexus with business and rejected the AO's presumption-based disallowance of interest, following consistent treatment by CIT(A) and acceptance in prior years. Regarding the alleged diversion of profits to a subsidiary (Jai Suspension Systems LLP) for claiming higher deduction under section 80-IC, the Tribunal held that any adjustment for such arrangements must be made in the hands of the eligible unit under section 80IA(10) read with 80IC(7), not in the hands of the assessee. On merits, the assessee justified the fall in gross profit rate due to a substantial increase in power and fuel costs, supported by documentary evidence, which was not rebutted by the AO. Additionally, the Assessee's receipt of non-compete fees from the subsidiary restricted it from selling to major customers, affecting its margins. The Tribunal held that no evidence was brought by the AO to prove profit diversion and thus upheld the CIT(A)'s deletion of the addition of Rs. 10.95 crore. Accordingly, all grounds raised by the Revenue were dismissed. (AY 2012-13, 20013-14)
ITO v. Jamna Auto Industries [2024] 160 taxmann.com 1531/ 111 ITR 569 (Chd) (Trib.)

S. 80IC: Special category States-Partnership firm to company-Change in status of company in terms of its composition does not brings into action provisions of section 80IC(4)(ii)-Entitle to deduction. [S. 80IC(2)(a)(ii), 80IC(4)(ii)] 1280

The business of assessee-company is to manufacture Milk and Milk based products at industrial area of Haridwar. It filed its Income-tax return declaring certain business income which is claimed to be 100 per cent exempt under section 80IC(2)(a)(ii). Assessing Officer disallowed claim under section 80IC on allegation that designated zone of assessee was not notified in circular of zones for section 80-IC and conversion of assessee to company from partnership was reconstruction of business. On appeal before Com-missioner (Appeals), assessee submitted notification stating that it's zone was covered as a designated zone under section 80-IC. However, Commissioner (Appeals) changed basis of disallowance, by pointing that turnover and stock in Tax Audit Report versus Financial Statements was different and Form No. 10CCB mentioned initial assessment year as assessment year 2009-10 and not assessment year 2007-08, being date of inception of partnership. On appeal the Tribunal held that since there is a mere change in status of company in terms of its composition same did not brings into action provisions of section 80IC(4)(ii). The assessee is entitled to deduction. Also held that when a company frequently engages in buying and selling shares with short holding periods, high transaction volumes, and with share trading as one of its stated business objectives, such income is to be treated as business income under Section 28(i) rather than capital gains, regard-less of whether the transactions are funded by idle own funds or classified as investments in the books. (AY. 2010-11)
Madura Biotech (P.) Ltd. v. DCIT (2024) 208 ITD 699 (Delhi) (Trib.)

1281 **S. 80IC: Special category States –Return filed within due date –Audit Report-Form No. 10CCBB is filed along with original return-Denial of exemption is not valid. [S. 92E, 139(1), 143(1), Form No 3CEB, 10CCB]**

The Assessee, Supreme Treon Pvt. Ltd., contested the disallowance of a deduction claimed u/s 80-IC for its unit in Rudrapur, Uttarakhand on account of not filing its audit report in Form 10CCB before the due date of filing the ROI. As per the Department the due date for filing return for Assessee was 31.10.2015, however, as per the Assessee it was 30.11.2015, where the return was actually filed by the Assessee on 29.11.2015. The ITAT analyzed the provisions of section 139(1) and observed that the Assessee's return, filed on 29.11.2015, fell within the prescribed due date. It was emphasized that compliance with section 92E did not alter this deadline. Furthermore, the ITAT determined that the Assessee's filing of Form 10CCB alongside the return sufficed for claiming the deduction under section 80-IC. They highlighted that the intimation issued under section 143(1) did not provide a valid basis for denying the deduction. (AY. 2015-16)

Supreme Treon P. Ltd. v. Dy. CIT [2024] [2024] 109 ITR 1 (SN) /227 TTJ 553 (Mum)(Trib)

1282 **S. 80IE: Undertakings-North-Eastern States-Manufacturing pharmaceutical products and products developed in research and development centres-Allocation of expenditure-Unrelated to products manufactured in Sikkim Unit-Allocation of research and development expenditure to Sikkim unit is wrong. [S. 35]**

Assessee is engaged in business of manufacturing pharmaceutical products. It had various manufacturing units, and its Sikkim unit was eligible to claim deduction under section 80IE. It had also two research and development centres. It claimed deduction in respect of manufacturing unit at Sikkim under section 80IE. Assessing Officer treated research and development expenditure to be inextricably linked with business of assessee including business relating to products that were manufactured in Sikkim unit for which deduction was claimed under section 80-IE and allocated said expenditure for computing deduction claimed under section 80-IE and partly disallowed deduction. CIT(A) deleted the disallowance. On appeal the Tribunal held that since products developed in research and development centres were completely unrelated to products manufactured in Sikkim unit of assessee, allocation of research and development expenditure to Sikkim unit eligible for deduction under section 80-IE is rightly deleted by Commissioner (Appeals). (AY. 2018-19, 2021-22)

DCIT v. Macleods Pharmaceuticals Ltd. (2024) 209 ITD 466 (Mum) (Trib.)

1283 **S. 80JJA: Bio-degradable waste-Collecting and processing-Undisclosed closing stock of a trading concern-Income not derived from the activity of manufacturing-Addition of entire stock as in-come justified-Business Expenditure-Expenditure not supported by vouchers-Restriction of disallowance to 10 percent of expenditure is held to be justified. [S. 37(1), 260A]**

Assessee was engaged in an agro-based industry and manufacturing of bio-fuel briquettes. He also dealt with sanitary items under the proprietor's name of 'Hindustan Sanitary Plaza. AO noticed a discrepancy in the stock and the assessee was not able to produce any document to show that such closing stock was declared. The entire value of the stock was added to the income of the assessee. The Assessee pleaded that

he should get the benefit of deduction under section 80JJA. The addition was made on account of undisclosed closing stock of Hindustan Sanitary Plaza, and this concern was dealing with the sanitary items. This income was not derived from the activity of manufacturing and hence, no deduction under section 80JJA qua closing stock was allowable. High Court also affirmed the order of the Tribunal disallowance of 10 percent of expenditure which are not supported by vouchers. (AY. 2014-15)
Arvind Kumar v. ITAT [2024] 461 ITR 283 (P&H)(HC)

S. 80JJAA : Employment of new workmen-Period of 300 days can be taken into consideration both in the previous and succeeding years –It is not required that workmen work for 300 days in previous year relevant to assessment year-Appeal of assessee is allowed. [S. 260A] 1284
The assessee is in the business of manufacturing apparels, and it employed workmen routinely. It claimed deduction under section 80JJAA in respect of new regular employees, employed on permanent basic. The Assessing Officer held that workmen were not employed for a period of 300 days in previous year and, therefore, assessee was not entitled for said benefit. Order of the Assessing Officer is affirmed by the CIT(A) and Tribunal. On appeal allowing the appeal of the assessee the Court held that Period of 300 days can be taken into consideration both in the previous and succeeding years. (AY. 2013-14 to 2016-17)
Aquarelle India Ltd v. Dy. CIT (2023) 157 taxmann.com 244/ (2024) 336 CTR 365 (Karn) (HC)

S. 80JJAA : Employment of new workmen – Audit Report-Claim of deduction cannot be denied even if audit report might not have been filed along with return of income however the report was filed before passing of assessment order. [S. 139(1), 139(4), 143(1), Form No 10DA] 1285
Assessee filed its return of income which was processed under section 143(1). Claim of deduction under section 80JJAA had been rejected by CPC for reason that assessee failed to file Form 10DA within prescribed time under Statute. CIT(A) upheld the disallowance. On appeal the Tribunal held that the chartered accountant of assessee had uploaded Form 10DA before due date of filing of return of income, and it was only because of procedural lapse/mistake on part of assessee that aforesaid form could not be accepted before due date of filing of return of income. Further, assessee had duly accepted Form 10DA before return of income was processed by CPC. Since requisite audit report was available with Assessing Officer before assessment order was framed, claim of deduction could not have been denied to assessee, even if audit report might not have been filed along with re-turn of income. (AY. 2022-23)
Akuntha Projects (P.) Ltd. v. Deputy Director-CPC (2024) 207 ITD 82 (Ahd) (Trib.)

S. 80-O : Royalties-Foreign enterprises-Royalty or fees received from foreign entity-Mere claim of sending newspaper cuttings does not amount to proof of sharing commercial expertise-No evidence for provision of information to foreign entity-Deduction rightly rejected by Tribunal. [S. 260A] 1286
Dismissing the appeal the Court held that The Chief Commissioner had ordered the Assessing Officer to determine the amount eligible for deduction. Even otherwise, the

Assessing Officer, under the Act itself was responsible for ensuring the regularity of returns of income in his jurisdiction and had the authority to examine them, ask for supporting documents, recompute the taxable income and issue assessment orders and raise tax demands. The Assessing Officer also had the power to ask for books of account, documents and other evidence from the assessee to verify the accuracy and completeness of the return of income filed. The order of the Tribunal rejecting the deduction under section 80-O was not interfered with. (AY. 1995-96)
Hindustan Export and Import Corporation P. Ltd. v. Dy. CIT (2024)465 ITR 412/162 taxmann.com 275 (Bom)(HC)

1287 **S. 80P: Co-operative Societies-Deduction-Surplus profit earned from the business of providing credit facilities to the members kept in the bank-Interest income earned therefrom is eligible for deduction under section 80P of the Act. [S. 80P(2)(a),80P(2)(d)]**
The assessee a co-operative society, was engaged in the business of providing credit facilities to its members. Profit earned from providing the credit facilities from members was eligible for deduction under section 80P (2) (a) of the Act. Interest earned from the surplus profit deposited with bank or other permitted institutions is also eligible for the benefit of deduction under section 80P (2)(a) of the Act.
PCIT v. Sahyadri Co-operative Credit Society Ltd. (2024) 301 Taxman 36 (Ker.)(HC)

1288 **S. 80P : Co-operative Societies-Providing credit facilities to members-Interest received from members and non-members-Mutuality-If the nominal/associate members of the assessee society are not members and they are not entitled to share of profits earned by the assessee, then proportionate deduction under s. 80P(2)(a)(i) is to be granted in respect of interest earned by providing credit facilities only to the regular members; issue is remitted to the AO for afresh consideration. [S. 57(iii), 80P(2)(a)(i), 80P(2)(d)]**
Held that the AO has to examine the by-laws of the society in regard to classification of members, their rights, sharing of profits of the society among the members (regular/ nominal). In the event it is found that the nominal/associate members of the assessee-society are not members, and they are not entitled to share of profits earned by the assessee, then proportionate deduction under s. 80P(2)(a)(i) is to be granted in respect of interest received from regular members only. Assessee is directed to produce the quantum of interest income received from all the categories of members for AO to carry out necessary verification. Accordingly, this issue is remitted to the AO for afresh consideration and determination of the interest received from members and non-members from providing credit facilities and decide the issue as per law. AO shall grant deduction on such interest income under s. 80P(2)(a)(i) if the assessee satisfies the principle of mutuality as per its byelaws. (AY. 2017-18)
Primary Agricultural Credit Co-Operative Society Ltd. v. ITO (2024) 231 TTJ 232 / 241 DTR 1 / 38 NYPTTJ 898 (Bang)(Trib)

S. 80P : Co-operative Societies-Interest received from Baroda Rajasthan Gramin Bank Ltd. being a regional rural bank is not a cooperative society-Not entitle to deduction-Interest from central co-operative bank is eligible deduction-Circular No. 6 of 2010, dt. 20th Sept., 2010. [S. 80P(2)(d)] 1289

Held that the interest received by the assessee from Baroda Rajasthan Gramin Bank Ltd., which is a regional rural bank and not a co-operative bank is not allowable as deduction under s. 80P(2)(d). As regards interest received by the assessee from central co-operative bank is allowable as deduction under S. 80P(2)(d) of the Act. (AY. 2018-19)

ITO v. Bhilwara Zila Dugdh Utpadak Sahkari Sang Ltd (2023) 37 NYPTTJ 1453 / (2024) 227 TTJ 129 / 233 DTR 65 /161 taxmann.com 219 (Jodhpur)(Trib)

S. 80P : Co-operative Societies-Interest income on investments made with Co-Operative Banks-Entitle to deduction. [S. 2(19), 80P(2)(d)] 1290

Held that interest or dividend income was derived by a co-operative society from investment with another co-operative society, the whole of such income is eligible for deduction under section 80P(2)(d). Oder of CIT(A) affirming the order of the Assessing Officer is set aside. (AY. 2018-19)

Ijmima Imitation Jewellery Market Society Ltd. v. AO (2024) 115 ITR 72 (SN)(Mum)(Trib)

S. 80P : Co-operative Societies-Delay is condoned-Regular, nominal and associate members-Issue is remitted to Commissioner (Appeals). [S. 80P(2)(a)(i), 143(3)] 1291

Delay of 149 days in filing the appeal is condoned. Issue is remitted to CIT(A) to decide on merit. (AY. 2017-18)

Sahaara Alpasankyatara Vividodesha Sahakara Sangha Niyamitha v. ITO (2024)114 ITR 65 (SN)(Bang)(Trib)

S. 80P : Co-operative Societies-Deposits made out of surplus funds with Co-Operative Banks and scheduled Banks-Entitled to deduction of interest. [S. 80P(2)(a)(i), 80P(2(d), Maharashtra Co-operative Societies Act, 1960] 1292

Allowing the appeal the Tribunal held that the interest income earned by the co-operative society on deposits made out of surplus funds with co-operative banks as well as scheduled banks qualified for deduction both under the provisions of section 80P(2)(a)(i) and section 80P(2)(d) of the Act. The Assessing Officer was directed to allow the deduction under section 80P(2)(a)(i) and 80P(2)(d) in respect of interest income earned from co-operative bank/scheduled bank. (AY. 2018-19)

Kolhapur District Central Co-Operative Bank Kanista Sevakanchi Sahakar Pat Sanstha Ltd. v. ITO (2024)113 ITR 269 (Pune)(Trib)

S. 80P : Co-operative Societies Credit facilities to its members-Nominal Members-Issue restored to Assessing Officer to examine claim following the decision of Supreme Court in Mavilayi Service Co-Operative Bank L td. v. CIT (2021) 431 ITR 1 (SC)-Interest earned from deposits kept with bank-Income from other sources-Corresponding expenditure incurred in earning interest income should be allowed as deduction-Issue restored to Assessing Officer-Cash credits-Demonetisation-Money deposited by its members towards repayment of loans and pigmy deposits-Stopped collection after 1293

receipt of Notification Dated 14-11-2016 issued by Reserve Bank Of India-Cash deposits cannot be treated as unexplained money-Addition is deleted [S. 56, 68, 80P(2)(a)(i), 80P(2)(d)]

Held, that since the assessment order had been passed prior to the decision rendered by the Supreme Court in the case of *Mavilayi Service Co-Operative Bank Ltd. v. CIT (2021) 431 ITR 1 (SC)* wherein many legal principles had been settled, the issue required to be examined afresh in the light of the decision of the Supreme Court. Accordingly, the order of the Commissioner (Appeals) was set aside and the issue restored to the Assessing Officer to examine the claim of deduction under section 80P(2)(a)(i) following the decision of the Supreme Court (Supra). Held that the issue regarding disallowance of deduction under section 80P(2)(d) of the Act was raised for the first time before the Tribunal. Besides, the assessee had raised a contention that if interest income was assessed under the head "Income from other sources", the corresponding expenditure incurred in earning interest income should be allowed as deduction. Since this was also a new contention, the issue was restored to the Assessing Officer for examining it in the light of decision of the High Court in the case of *Totgars Co-Operative Sales Society Ltd. v. ITO (2015) 58 taxman.com 35 (Karn)(HC)*. Held, that the assessee had explained why it had collected the demonetised notes after the prescribed date of demonetisation and had stopped collection after the receipt of notification dated November 14, 2016 issued by the Reserve Bank of India, which had clearly clarified that the assessee-society should not collect the demonetised notes. Therefore, the deposit of demonetised notes collected by the assessee from its members would not be hit by the provisions of section 68 of the Act. The order of the Commissioner (Appeals) was set aside, and the Assessing Officer was to delete the disallowance. (AY. 2017-18)

Sri Bhageeratha Pattina Sahakara Sangha Niyamitha v. ITO (2024)113 ITR 180 (Bang) (Trib)

1294 **S. 80P : Co-operative Societies-Interest earned on deposits with Co-Operative Banks-Eligible for deduction. [S. 2(19), 80P(2(d), Banking Companies Act, 1949, 5(1), Co-operative society registered under the Co-operative Societies Act, 1912, Maharashtra Co-Operative Societies Act, 1960, S. 2(10)]**

Held that according to section 80P(2)(d) of the Act if the co-operative society makes any investment in another co-operative society, any interest or dividend earned from such investment was eligible for deduction. Section 2(19) of the Act defines" co-operative society" as a co-operative society registered under the Co-operative Societies Act, 1912 or under any other law for the time being in force in any State for the registration of co-operative societies. Section 2(10) of the Maharashtra Co-operative Societies Act, 1960 defines "co-operative bank" as a co-operative society which is doing the business of banking as defined in clause (b) of sub-section (1) of section 5 of the Banking Companies Act, 1949 and includes any society which is functioning or is to function as an Agricultural and Rural Development Bank under Chapter XI. According to the definition, co-operative banks are also co-operative societies. The words of the statute were plain and clear and there was no room for applying any of the principles of interpretation. They were to be interpreted as they stood. Thus, the investments made

by the assessee with co-operative banks in Maharashtra were investments made in co-operative societies. The Assessing Officer is directed to grant the assessee deduction of interest earned from co-operative banks under section 80P(2)(d) of the Act. (AY. 2015-16)
Ashok Tower "D" Co Op Housing Society Ltd. v. ITO [2024] 163 taxmann.com 598/113 ITR 31 (SN) (Mum) (Trib.)

S. 80P : Co-operative Societies-Net surplus out all maintenance expenses –Interest Income-Bank fixed deposits-Eligible Deduction-Assessee had rightly set off interest income against maintenance expenses and addition made on this account was liable to be deleted. [S. 56, 57, 80P(2)(c) (ii)] 1295

Held that assessee, a housing co-operative society, showed net surplus of Rs. 4,64,486 in its profit and loss account after netting out all maintenance expenses, assessee is eligible for deduction under section 80P(2)(c)(ii). Assessee has earned interest income on fixed deposits and claimed to set off same against income of society. Assessing Officer disallowed claim on ground that no expenditure was incurred wholly and exclusively for purpose of earning such interest income. CIT (A) affirmed the order of the AO. On appeal the Tribunal held that income earned by society by way of interest on bank fixed deposits was spent for maintenance and upkeepment of residential premises of society. Accordingly, the interest income earned from fixed deposits was directly linked with activity of maintenance of society. Tribunal held that interest income certainly reduced burden of contribution for maintenance by members of society. The Tribunal also held that the Assessing Officer was not justified in denying benefit to assessee simply on ground that assessee showed bank interest income under head other sources. Therefore, assessee-society had rightly set off interest income against maintenance expenses and addition made on this account was liable to be deleted. (AY. 2018-19)
Venus Parkland Co-Op. Housing Service Society Ltd. v. ITO (2024) 209 ITD 229 (Ahd) (Trib.)

S. 80P : Co-operative Societies – Deduction – State-level co-operative credit society – Nominal and associate members – Interest income and other claims- Entitled to deduction u/s 80P(2)(a)(i) in respect of interest from credit facilities to nominal and associate members - Guarantee commission payments were remanded to AO to verify admissibility u/s 37(1). [S. 37(1), 43B, 56, 57, 80P(2)(a)(i), 80P(2)(d), 80P(4), Banking Regulation Act, 1949, S. 5(c), Karnataka Co-operative Societies Act, 1959, S. 2(f)] 1296

The assessee, a State-level non-banking co-operative credit society, was held not to be a bank under S. 5(c) of the Banking Regulation Act, and thus not covered by the exception under S. 80P(4). It was entitled to deduction u/s 80P(2)(a)(i) in respect of interest from credit facilities to nominal and associate members, as such members are covered under S. 2(f) of the Karnataka Co-operative Societies Act. However, interest on loans to employees was not "attributable" to the business of the assessee and taxable as "income from other sources", subject to relief u/s 57 for proportionate cost and expenses. Interest on investments with co-operative societies qualified u/s 80P(2)(d), but interest from banks was taxable under "other sources". Guarantee commission payments were remanded to AO to verify admissibility u/s 37(1), as they were not covered under S.

43B. Business loss and quantification issues were remanded. Income from e-stamping services was not eligible u/s 80P(2), but AO to consider alternate claim in accordance with law.(AY 2012-13 to 2018-19, 2020-21)
Karnataka State Co-Operative Agriculture and Rural Development Bank Ltd. v. ITO (2024) 112 ITR 664 (Bang)(Trib)

1297 **S. 80P : Co-operative Societies-Rental income and interest on deposits-Service charges shown as income from other sources-Matter remanded to the file of CIT(A). [S. 22, 24, 56, 57]**
The Assessing Officer disallowed the deduction claimed by the assessee under section 57 of the Act out of service charges received and shown under the head "Income from other sources", on the ground that the assessee had already been allowed deduction under section 24 of the Act for these expenses while computing income from house property. The Commissioner (Appeals) dismissed the appeal of the assessee holding that the Assessing Officer had made addition on account of service charges protectively in the hands of the assessee as the service charges were received with regard to the property owned by the trust and need to be assessed in the hands of the trust substantively. Tribunal held that in the case of the assessee itself the Tribunal for the assessment years 2005-06, 2006-07 and 2009-10 had allowed the claim to deduction of service charges in favour of the assessee. However, the Commissioner (Appeals) had not taken into consideration the submissions of the assessee. Therefore, this issue was also to be restored to the file of the Commissioner (Appeals) for decision afresh after considering the submissions of the assessee and findings of the Tribunal and recording reasons in support of his findings. (AY. 2013-14 to 2015-16)
Jolly Maker 1 Prem Co-Operative Society Ltd. v. ACIT (2024)110 ITR 35 (SN) (Mum)(Trib)

1298 **S. 80P: Co-operative Societies –Mentioning of status in the return of income as 'AOP' as against 'co-operative society' would not disentitle the assessee the benefits of deduction claimed u/s. 80P (2)(a)(i) of the Act. [S. 2(31), 80P(2(a)(i), 139, 143(1)]**
The assessee has filed its return of income as AOP for AY 2019-20 on 29.08.2019 by admitting NIL income after claim of deduction under section 80P(2a)(i) for Rs. 5.08 lacs. The CPC issued intimation u/s. 143(1) of the Act by denying exemption claimed on the ground that the status shown in the return of income as shown as AOP. Therefore, the assessee filed rectification application but the same was rejected. The appeal filed by the assessee against intimation and rectification order were rejected by the assessee. However, on further appeal, the Tribunal noted that u/s. 2(31) of the Act there is no distinct status for co-operative society and PAN of the assessee also shows status of the assessee as AOP/ BOI, that ITR-5 also mentions status of AOP/BOI and sub-status as cooperative society. The Tribunal held that considering the object of the society being lending money to its member the deduction was correctly claimed by the assessee in its return of income filed and so the reasons advanced by the revenue on this part had no force and were purely based on surmises and conjecture. Thus, the Tribunal directed the AO to allow the claim of the assessee as claimed in the ITR u/s. 80P (2)(a)(i) of the Act. (AY. 2019-20)
Presbyterian Church Co-operative Credit and Thrift Society Ltd. v. ITO (2024) 112 ITR 289 /163 taxmann.com 1070 /229 TTJ 134 (UO) (Jaipur)(Trib.)

S. 80P : Co-operative Societies-Providing credit to members Eligible for deduction to extent of income earned from facilities extended to its members only-Matter remanded to Assessing Officer-Delay in filing appeal is condoned. [S. 80P(2)(a)(i), 253] 1299

Held that even if the credit facilities were provided for non-agricultural purposes to its members, the assessee was entitled for the benefit under section 80P(2)(a)(i) of the Act. Accordingly, the assessee was eligible for deduction under section 80P(2)(a)(i) of the Act but to the extent of the income which has been earned from the facilities extended to its members only. The assessee had failed to satisfy the lower authorities that credit facilities were provided to its members only and not to non-members. Therefore, the assessee was directed to file the necessary details to the Assessing Officer and the Assessing Officer was directed to allow deduction under section 80P(2)(a)(i) to the assessee for the income earned through or from its members after providing the assessee reasonable and proper opportunity of being heard. Delay in filing appeal is condoned, relied on *N. Balakrishnan v. M. Krishnamurthy (1998) 7 SCC 123* relied on. (AY. 2015-16) *Enayetpur S. K. U. S. Ltd. v. ACIT (2024) 111 ITR 75 (SN)(Kol)(Trib)*

S. 80P : Co-operative Societies-Interest-Investment with Co-Operative Banks-Income from other sources-Eligible for deduction of cost for earning of such income-Matter remanded to Assessing Officer for fresh consideration. [S. 56, 57(iii), 80P(2)(d)] 1300

Held that the entire interest income on the investment made with co-operative banks had been considered as income under section 56 of the Act and no expenditure under section 57(iii) had been allowed for earning such interest income. Therefore, the assessee is eligible for deduction of the cost for earning of such income. Accordingly, the issue was to be remanded to the Assessing Officer for fresh consideration in the light of the judgment of the High Court in *Tatgars Co-Operative Sale Society Ltd v. ITO (2015) 58 taxmann.com 35 (Karn)(HC)* for determination of correct income after giving the assessee reasonable opportunity of being heard and decision of the issue as per law. (AY. 2017-18) *Karnataka Power Corporation Limited Employees Credit Co-Operative Society Ltd. v. ITO (2024) 111 ITR 73 (SN)(Bang)(Trib)*

S. 80P : Co-operative Societies-Interest-Co-Operative banks-Interest income not attributable to main business-Deduction is not allowable-Interest on investment made in Co-Operative Banks-Eligible for claim of its cost of funds on entire interest income-Matter remanded. [S. 57, 80P(2)(a)(i), 80P(2)(d)] 1301

Assessee was a co-operative society engaged in business of providing credit facilities only to its members. Assessing Officer held that the assessee is not eligible to claim deduction under section 80P since it is not a cooperative society. CIT(A) held that interest income received on investments with co-operative banks is not eligible for deduction under section 80P(2)(a)(i) as well as section 80P(2)(d), however, partly allowed deduction under section 80P(2)(a)(i). On appeal the Tribunal held that since interest income received by assessee is not attributable to main business of assessee, same could not be allowed as deduction under section 80P(2)(a)(i). However where the assessee had received interest from co-operative bank, issue of whether eligible to get deduction under section 80P(2)(d) on such inter-est income received from co-operative banks, being a bank in terms of apex Court decision in *Kerala State Co-operative Agricultural and*

Rural Development Bank Ltd. v. AO (2023) 295 Taxman 675/ 458 ITR 384 (SC). Matter remanded back for disposal afresh. (AY. 2017-18, 2018-19)
Saptagiri Pattina Souharda Sahakari Sangha Niyamitha v. ITO (2024) 207 ITD 41 (Bang) (Trib.)

1302 **S. 80P : Co-operative Societies-Miscellaneous income-Grant from Government for activities in terms of bye-Laws-Cannot be treated as income from other sources-Eligible for deduction. [West Bengal Co-operative Societies Act, 1973]**
Held that the assessee is working only for the tribal members and the main purpose of the society was to provide mini bank service to its members and sale of fertilizers to its tribal members. Various grants were received from the West Bengal State Government. The West Bengal Tribal Development Co-operative Corporation Ltd., which was a Government of West Bengal undertaking, was an apex body over societies like the assessee. The miscellaneous income of Rs. 9,92,664 mainly constituted grants received from the West Bengal Government for various activities as per its registered bye-laws. Therefore, there was no reason to treat any of the miscellaneous in-come as income from other sources. Since the sum of Rs. 9,92,664 was in-come earned by the society for the purpose of its objects, it is eligible for deduction under section 80P of the Income-tax Act, 1961. (AY. 2017-18)
Udyan Large Size Multipurpose Co-Operative Society Ltd. v. ITO (2024) 160 taxmann.com 167 /109 ITR 586 (Kol) (Trib.)

1303 **S. 80P : Co-operative Societies-Interest Income-Co-Operative Bank-Eligible for deduction-Commission income on collection of MSEDCL bills which was from business activity-Eligible for deduction under section 80P(2)(a)(i) [S. 80P(2)(a)(i), 80P(2)(d)]**
Held that interest income from a co-operative bank which was registered under Co-operative Societies Act, 1912 is eligible for deduction. Held that commission income on collection of MSEDCL bills which was from business activity carried on by assessee, same is eligible for deduction under section 80P(2)(a)(i). (AY. 2018-19)
Anand Urban Co-operative Credit Society Ltd. v. ITO (2024) 206 ITD 36 (Pune) (Trib.)

1304 **S. 80P : Co-operative Societies-Interest-co-operative bank-Eligible for deduction. [S. 80P(2)(a)(i), 80P(2)(d)]**
Held interest income derived by a co-operative society from its investments held with a co-operative bank would be eligible for deduction under section 80P(2)(a)(i)/80P(2)(d). (AY. 2020-21)
Shree Parashar Vividh Kary Kari Sahakari Vikas Sanstha Maryadit v. ITO (2024) 206 ITD 663 (Pune) (Trib.)

1305 **S. 80P : Co-operative Societies-Interest-Investments made in co-operative banks would be eligible for deduction. [S. 80P(2)(d)]**
Held that interest income earned by a co-operative society from investments made in co-operative banks would be eligible for deduction under section 80P(2)(d) of the Act. (AY. 2018-19, 2020-21)
Sangli Division Telecom Workers Co-op Credit Society Ltd. v. ITO (2024) 206 ITD 529 (Pune) (Trib.)

S. 80P : Co-operative Societies-Interest-Co-Operative Bank-Eligible deduction. [S. 80P(2)(d)] 1306
Held that interest earned by assessee-co-operative credit society from co-operative bank is eligible for deduction under section 80P(2)(d). (AY. 2018 19, 2014-15)
Sardar Patel Co-Operative Credit Society Ltd. v. DCIT (2024) 205 ITD 327 (Surat) (Trib.)
Sardar Patel Co-Operative Credit Society Ltd. v. DCIT (2024) 205 ITD 408 (Surat) (Trib.)

S. 80P : Co-operative Societies-Interest-Co-Operative banks and other nationalised banks-Eligible for deduction. [S. 80P(2)] 1307
Held that interest income received by assessee, a co-operative society, on deposits pertaining to reserved fund with co-operative banks and other nationalized banks is eligible for deduction under section 80P. (AY. 2018-19)
ITO v. Yendagandhi Large Sized Co-operative Society Ltd. (2024) 204 ITD 203 (Visakhapatnam) (Trib.)

S. 80P: Co-operative Societies-Interest- Deposits made out of Surplus funds with Co-Operative banks and Schedule Banks-Eligible for deduction. [S. 80P(2) (a) (i), 80P(2)(d)] 1308
The appellant was a co-operative society engaged in the business of providing credit facilities to its members. The Ld. AO disallowed the claim for deduction of interest income earned on fixed deposits made with bank by holding it to be a co-operative bank and not a co-operative society. The Hon'ble CIT(A) affirmed the order of the Ld. AO. On appeal, the Hon'ble Tribunal relying on the decision in case of *Ugar Sugar Works Kamgar & Dr. Shirgaokar Shaikshanik Trust Nokar Co-op Credit Society v. ITO in [IT Appeal No. 84 (PAN) of 2018, dated 27-5-2022]* held that even the interest income earned by the cooperative society on deposits made out of surplus funds with the co-operative bank as well as schedule bank qualifies for deduction both under provisions of section 80P(2)(a)(i) and section 80P(2)(d) and therefore the reasoning given by the lower authorities on this issue cannot be accepted. (AY. 2018-19)
Kolhapur District Central Co-op Bank Kanista Sevakanchi Sahakar Pat Sanstha Ltd. v. ITO [2024] 205 ITD 6 (SMC) (Pune) (Trib)

S. 80P : Co-operative Societies-Interest-Co-Operative Banks and Nationalised Banks-Eligible for deduction. [S. 80P(2)] 1309
The appellant, a primary agricultural co-operative credit society, was engaged in providing credit facilities, supply of agricultural inputs and consumer goods to its members. It had claimed deduction in respect of interest income received on deposits pertaining to reserved fund with co-operative banks and other nationalized banks under section 80P(2)(a)(i). The Ld. AO was of the view that the investments with the banks were made from surplus funds which is not attributable to the activity of the Appellant in providing credit facilities to it's members and thus the Ld. AO disallowed the deduction claimed under Section 80P (2). Further, the Ld. CIT(A) relying on the decision of Hon'ble Andhra Pradesh High Court in case of *Vavveru Co-operative Rural Bank Ltd [(2017) 396 ITR 371 (AP)(HC)]* dismissed the ground of revenue. The Appellant Hon'ble Tribunal upheld the decision of the Ld. CIT(A) by following various decisions wherein it was held that in order to claim the deduction under Section 80P(2)(a)(i), the original source of the investment is to be seen. Since the original source was the activities listed in 80P(2)(a), the character of such

income shall not be lost, especially since the statute uses the term 'attributable to' and not 'derived from' or 'directly attributable to. (AY 2018-19)
ITO v. Yendagandhi large Sized Co-Operative Society Ltd. [2024] 204 ITD 203 (Vishakhapatnam)(Trib)

1310 **S. 80P: Co-operative Societies-Grants–Miscellaneous income cannot be assessed as income from other sources-Eligible for deduction. [S. 56]**
The appellant, a cooperative society engaged in providing Mini Bank services and sales to fertilizer to Tribal members claimed deduction under section 80P for miscellaneous income. Miscellaneous incomes mainly constituted grants received from West Bengal Government for various activities as per its required byelaws. The Ld. AO treated miscellaneous income as income from other sources. The Hon'ble Kolkata Tribunal held that since the income earned by the Society was for the purpose of its object, it was eligible for deduction under Section 80P of the Income-tax Act, 1961. (AY. 2017-18)
Udyan Large Size Multipurpose Co-op. Society Ltd v. ITO [2024] 160 taxmann.com 167 (Kol) (Trib.)

1311 **S. 80P: Co-operative Societies-Deductions-Commission income on collection of MSEDCL bills which was from business activity carried on by Appellant, same was eligible for deduction under section 80P(2)(a)**
The Appellant, a co-operative society, had received commission income on collection of MSEDCL bills which was from business activity carried on by Appellant. The Ld. AO disallowed the said deduction. The Hon'ble Tribunal relying on the decision of *Bhagyalaxmi Nagri Sahakari Patsanstha Meryadit v. ITO [IT Appeal Nos. 705 & 706 (PUN) of 2021 dated 14-3-2022]* allowed the deduction under section 80P(2)(a) as the same was from the business activity carried on by the Appellant. (AY. 2018-19)
Anand Urban Cooperative Credit Society Ltd. v. ITO (2024] 206 ITD 36 (SMC) (Pune) (Trib)

1312 **S. 87A: Rebate of income-tax in case of certain individuals-New tax regime-Tax on income of individuals and Hindu undivided family-Appellant could not be restrained from claiming rebate under section 87A by modifying utility by which Appellant was forbidden at threshold itself from making such a claim [S. 112A(6), 115BAC, 119, 139(1), 139(4), 139(5), 139D, Art. 226, 265]**
The individual taxpayers while preparing their return of income using the Income Tax utility faced the issue of not being able to claim rebate under Section 87A. This was on account of a change in the utility done by the revenue with effect from 05-07-2024. Pursuant to the said modification, the Chamber of Tax Consultants filed a Public Interest Litigation before the Hon'ble High Court. The Hon'ble High Court held that whether rebate under Section 87A is available only from tax computed under Section 115BAC or also from tax computed under other provisions of Chapter XII is a highly debatable and contentious issue, and that the revenue would not be justified in restraining the assessee from claiming rebate under Section 97A by modifying the utility. Further, the Hon'ble High Court held that the provisions of Section 139D read with Rule 12 provide for filing return of income in electronic mode and empower the Board to make rules for class of persons who are required to file return of income. However, the said provisions do not empower authorities

to design form on basis of their reading of law or provisions which debar an assessee from making a claim at threshold itself. (WP L. NO. 32 465of 2024 dt 20-12-2024) (AY. 2024-25) *The Chamber of Tax Consultants v. Director General of Income-Tax Systems & Ors (2025) 302 Taxman 505 (Bom)(HC)*

Editorial : Final order, Chamber of Tax Consultants v. DGIT (systems) (2025) 473 ITR 85 / 303 Taxman 451 (Bom)(HC)

S. 90 : Double taxation relief-Elimination of double taxation-Review petition dismissed against order of Supreme Court that a notification under section 90(1) is a mandatory condition to give effect to a DTAA, or any protocol changing its terms or conditions, which has effect of altering existing provisions of law -DTAA-India-France. [Art. 10, 13] 1313

The Hon'ble Supreme Court held that interpretation of Expression 'is' occurring in DTAAs [clause IV(2) of India-Netherlands DTAA protocol-other two clauses in relation to France and Switzerland being similar] would have present signification, therefore, for a party to claim benefit of a same treatment clause, based on entry of DTAA between India and another state which was member of OECD, relevant date is entering into treaty with India and not a later date, when, after entering into DTAA with India, such country becomes an OECD member, in terms of India's practice. Further, a stipulation in a DTAA or a protocol with one nation, requires same treatment in respect to a matter covered by its terms, subsequent to its being entered into when another nation (which is member of a multilateral organization such as OECD), is given better treatment, does not automatically lead to integration of such term extending same benefit in regard to a matter covered in DTAA of first nation, which entered into DTAA with India, and in such event, terms of earlier DTAA require to be amended through a separate notification under section 90. Furthermore, notification under section 90(1) is a necessary and a mandatory condition for a court, authority, or tribunal to give effect to a DTAA, or any protocol changing its terms or conditions, which has effect of altering existing provisions of law. No case for review of above order was made out and, thus, review petition was dismissed.

Nestle SA v. AO (IT) (2024) 300 Taxman 361/ 341 CTR 320/ 243 DTR 88 (SC)

Editorial: AO(IT) v. Nestle SA (2023) 155 taxmann.com 384/ 296 Tax-man 580/335 CTR 145/ 231 DTR 113 (SC)

S. 90 : Double taxation relief-A notification under section 90(1) would be a mandatory condition to give effect to a DTAA, or any protocol changing its terms or conditions - which would have effect of altering existing provisions of law- for a party to claim benefit of a 'same treatment' clause, based on entry of DTAA between India and another state which is member of OECD, relevant date would be entering into treaty with India and not a later date-Writ petition is dismissed. [ITR. 128, Art. 226] 1314

The Hon'ble Delhi High Court relying on the decision of Hon'ble Supreme Court in case of *Ld. AO v. Nestle SA (2023) 155 taxmann.com 384 (SC)* held that for a party to claim benefit of a "same treatment" clause, based on entry of DTAA between India and another state which is member of OECD, relevant date is entering into treaty with India and not a later date. Further, a stipulation in a DTAA or a protocol with one nation requires same treatment in respect to a matter covered by its terms, subsequent to its being entered into when another nation (which is member of a multilateral organization

such as OECD), is given better treatment, does not automatically lead to integration of such term extending same benefit in regard to a matter covered in DTAA of first nation, which entered into DTAA with India, and thus, terms of earlier DTAA would require to be amended through a separate notification under section 90. Since issue raised by appellant was covered by said decision of Hon'ble Supreme Court, writ petition was to be closed.

Societe De Participations Financieres Et Industrielles Spafi (2024) 297 Taxman 75 (Delhi) (HC)

Editorial : Societe de Participations Financiers v ACIT (2025)303 Taxman 586 /474 ITR 199 (SC), SLP of assessee is dismissed.

1315 **S. 90: Double taxation relief-DTAA overrides provisions of section 206AA-Rate of tax to be applied for grossing up should be as per DTAA-No substantial question of law. [S. 206AA, 260A]**

The assessee made payments to non-residents without deducting tax at source, claiming exemption under DTAA. Revenue contended that provisions of section 206AA overrides DTAA, requiring higher tax rate for non-PAN furnishers. The Hon'ble Commissioner of Income tax (Appeals) as well as the Hon'ble Tribunal held that DTAA provisions overrides section 206AA. The Hon'ble High Court relying on the decision of *CIT (IT) v. Wipro Ltd. (2023) 146 taxmann.com 129 (Karn)(HC) [2023] 146* and connected matters, held that the Tribunal and Commissioner of Income tax (Appeals) were right in holding that provisions of DTAA overrides provisions of section 206AA and rate of tax to be applied for grossing up should be as per DTAA. (AY. 2018-19)

CIT(IT) v. Edgeverse Systems Ltd (2024) 166 taxmann.com 316/ 469 ITR 267 (Karn)(HC)

Editorial: Delay of 402 days. Application seeking condonation of delay did not assign any satisfactory reasons for delay nor were they sufficient in law to be condoned, SLP is dismissed. CIT v. Edgeverse Systems Ltd. (2024) 300 Taxman 590 / 469 ITR 269 (SC)

1316 **S. 90 :Double taxation relief-Foreign tax credit-taxes paid by Australian branch-Reasons for such denial could not be discerned- matter remanded for reconsideration in so far as tax credit claim was concerned-DTAA-India-Australia. [Art. 24, Art. 226]**

Appellant claimed Foreign Tax Credit (FTC) under section 90 read with article 24 of DTAA between India and Australia in respect of taxes paid by its Australian branch. The Ld. AO computed FTC and such computation tallied with FTC claim of appellant. In spite of accepting computation of appellant, the Ld. AO failed to grant relief of tax credit. On filing a writ petition, the Hon'ble High Court held that since reasons for such denial could not be discerned and such facts and circumstances warranted reconsideration, matter was to be remanded for reconsideration in so far as FTC claim was concerned. (AY. 2022-23) (SJ)

Thejo Engineering Ltd v. DCIT, CPC (2024) 300 Taxman 403 (Mad)(HC)

S. 90 : Double taxation relief-Fees for included services-India – USA DTAA -IT Support services to achieve standardized IT environment-The amount received by the appellant on account of said services does not fall within the ambit of 'fee for included services-such services did not make available any technical knowledge, experience, skills, etc., to recipient - Not taxable as per India-USA DTAA. [S. 9(1)(vi), 9(1)(vii), Art. 12 of India-USA DTAA] 1317

The appellant was a company engaged in the business of designing, engineering and manufacturing systems for various automotive clients as well as rendering IT support services. It entered into an IT support services agreement to provide routine operational and maintenance support services to its sister concern in India. The Ld. Assessing Officer treated total remittances received by appellant on account of providing IT support services as fee for technical services under section 9(1)(vii) (b) and taxed same under section 115A at rate of 10 per cent. The Hon'ble Tribunal held that disaster recovery/back-up services, helpdesk support services, user administration, maintenance of IT infrastructure support services and telecom services provided by the appellant to its sister concern in order to achieve a standardized IT environment do not make available any technical knowledge, experience, skills, etc., to the recipient, since the latter cannot at any time independently manage the IT environment and therefore, the amount received by the appellant on account of said services does not fall within the ambit of 'fee for included services' as defined under art. 12 of India-US DTAA and hence, not taxable in India. (AY. 2014-15 to 2017-18)

Visteon Corporation v. Dy. CIT (IT) [2024] 167 taxmann.com 484 /(2024) 231 TTJ 449 (Chennai) (Trib.)

S. 90: Double taxation relief-Capital Gains-Tax residency certificate-Eligible for the benefits of the DTAA in respect of capital gain on the sale of shares of an Indian company and the interest income from compulsorily convertible debentures-DTAA-India-Singapore-assessee was to be allowed exemption. [Art. 11, 13] 1318

The assessee was a Singapore based company claimed exemption on capital gains arising on account from sale of shares of an Indian company under the India Singapore DTAA. The assessee had furnished its Tax Residency Certificate and submitted that it was an actual operating entity in Singapore with all the proofs. The Ld. AO alleged that the assessee's case was of treaty shopping and denied exemption under the treaty. The Hon'ble Tribunal held that Tax residency certificate, even though it is not a conclusive evidence of tax residency of an entity, it certainly is a statutory evidence and the burden is on the Revenue to establish from the facts and circumstance that the entity has been formed and operated in a manner that the only intention was to take benefit of the tax treaty without there being actual intention of an economic activity. There is no finding of the AO or the DRP as to whether any inquiry was independently conducted to rebut the statutory evidence of tax residency. Thus, at first instance the initial burden was discharged by the appellant by filing the statutory evidence of tax residency in the form of TRC, and the same was not rebutted by any inquiry or evidence by the AO. Therefore, appellant was allowed exemption. (AY. 2017-18)

TYCO Electronics Singapore Pte Ltd. v. Dy. CIT (IT) [2024] 166 taxmann.com 491 /231 TTJ 737 / 242 DTR 1 (Delhi) (Trib.)

1319 **S. 90: Double taxation relief-Salary received-Services rendered in Australia-Tax resident of Australia-Not taxable in India-DTAA-India-Australia. [S. 5, 9(1)(ii) 15, Art. 4(1), 15(1)]**

The appellant was on an overseas assignment and was exercising employment by rendering services in Australia. The appellant was qualified as tax resident of Australia for the subject year. The appellant continued receiving salary in India. The AO has denied the exemption claimed under Article 15(1) of the India- Australia DTAA on the premise that the TRC has not been furnished while ignoring that alternate evidence in support of the Tax Residency in Australia has been duly furnished i. e., Australia tax return is evidence of residency in the Australia and also evidences due payment of taxes in the Australia. The Hon'ble Tribunal, relying on co-ordinate bench ruling in Vishal Gulati and in Anjali Puri and of Ahmedabad ITAT's ruling in Sunil Chitranjan Muncif, judgment of Karnataka High Court in Prahlad Vijendra Rao, of Bombay High Court in Avtar Singh Wadhwan, and of Calcutta High Court in Sumana Bandyopadhyay held that "the exemption…claimed by the Assessee under Article 15(1) of the India-Australia DTAA…in respect of employment exercised/ services rendered in Australia to Nokia Australia be allowed" Further, from the concurrent reading of Section 5 dealing with scope of total income, Section 15 dealing with computation of total income under the head salary and chargeability thereof and Section 9 dealing with income arising or accruing in India with reference to the salaries and the services rendered in India, the Tribunal held that no taxability arises on the salary/allowances received by the appellant since the appellant is a non-resident and has rendered services outside India. (AY. 2020-21)

Yogesh Kotiyal v. ACIT (IT) (2024) 231 TTJ 73(Delhi)(Trib)

1320 **S. 90 :Double taxation relief-Credit for tax paid abroad- directory in nature-Form No. 67 was filed and uploaded on portal on 18th Oct., 2021 on two months prior to intimation-Matter remanded to the CIT(A) to give credit to the USA income of the appellant and FTC as claimed after due verification. [S. 91, 13991), 143(1), Form No 67. R. 128(9)]**

The appellant, a tax resident of the USA, filed his Indian income tax return and claimed the benefit of FTC under section 90/91. However, the appellant inadvertently did not upload Form-67, which is required to claim FTC, along with the return. The appellant later uploaded Form-67 before the intimation under Section 143(1) was issued. The FTC claim was rejected by revenue on grounds that the appellant failed to comply with the obligation of filing Form-67 along with the return of income under section 139(1). The Hon'ble tribunal, relying on various judgements, held that the time-limit for filing Form No. 67 specified in R. 128(9) as it stood prior to 1st April 2022 is directory in nature and not mandatory. The Ld. AO as well as the Ld. CIT(A) denied appellant's claim for foreign tax credit despite the fact that Form No. 67 and its accompaniments were uploaded on the portal well before the issuance of intimation under s. 143(1), the matter was remanded back to the CIT(A) to give due credit to the USA income of the appellant and FTC as claimed after due verification. (AY. 2020-21)

Ashish Sood v. DCIT (2024) 229 TTJ 693 / 237 DTR 247 (Chd)(Trib)

S. 90: Double taxation relief-Service rendered in each projects sites did not exceed threshold limit of 183 days-No profits out of sale equipments as well as installation and commissioning services can be taxed in India-DTAA-India-Singapore. [Art. 5(3), 5(4)] 1321

The appellant, a Singapore based company, was engaged in satellite telecommunication network services. The appellant had carried out installation activities at two different sites of said company for First installation, installation began on 14-6-2017 and ended on 11-11-2017 and Second installation began on 9-11-2018 and ended on 2-2-2018. Thus, cumulatively, the activities of supervisory/installation work began on 14-6-2017 and ended on 2-2-2018, which worked out to 233 days. Thus, according to the Assessing Officer, the activities of the assessee in India exceeded the threshold limit of 183 days as per article 5(3) and 5(4) of India-Singapore DTAA and hence, the assessee had a PE in India. Hence, both the receipts from sale of equipments and installation & commissioning services were taxable in India as business profits. The Hon'ble Tribunal held that the materials on record indicate that the two projects are independent of each other and have no connection. Merely because the installation and commissioning services were provided by the same sub-contractor or some of the personnel en-gaged in both the projects are common, it cannot be concluded that both the projects are one and single project. Further, it was held that from the facts and materials on record, it was quite clear that the appellant has furnished material evidences to demonstrate that the installation and commissioning services for the Bangaluru project commenced on 14th June, 2017 and ended on 29th July, 2027, aggregating to 46 days. Installation and commissioning services for the Gurugram project commenced on 8th Nov. 2017 and ended on 2nd Feb. 2018 lasting for an aggregate period of 87 days. Thus, in both the instances the threshold period of 183 days as provided in articles. 5(3) and 5(4) of the DTAA was not breached. The appellant has also demonstrated that both in terms of man-days and solar days, two projects will not constitute PE in India under arts. 5(3) and 5(4) of India Singapore DTAA. Accordingly, the service rendered in each project's sites did not exceed threshold limit of 183 days hence no profits out of sale equipments as well as installation and commissioning services can be taxed in India. (AY. 2018-19 to 2020-21)

Planetcast International Pte. Ltd. v. ACIT (IT) (2023) 152 taxmann.com 422 (2024) 229 TTJ 640 (Delhi) (Trib)

S. 90 : Double taxation relief-Salary income earned in USA by a person resident in India-Since all the conditions mentioned in art. 16(2) of the DTAA are not attracted in the case of the Appellant, the income of the Appellant is taxable in USA and not in India-DTAA-India-USA [Art. 16(1), 16(2)] 1322

The appellant qualified as a resident and ordinarily resident of India during the subject year. The Ld. AO held that the global income of any individual resident was taxable in accordance with section 5(1). Hence, the salary received by the assessee from his foreign employer was chargeable to tax in India. The appellant stayed for less than 183 days in United States. There-fore, as per clause. (a) to art. 16(2) of the Indo-US DTAA, the income of the appellant is liable to be taxed in India. However, in view of the clause. (b) and (c), the salary income of the appellant is liable to be taxed in Unit-ed States as the remuneration was paid by the resident of the United States and therefore, clause.

(b) and (c) are not attracted in the case of the appellant. Accordingly, the Tribunal held that since the conditions mentioned in clause. (a), (b) and (c) to art. 16(2) of the Indo-US DTAA have to be applicable together or to say simultaneously and since all the conditions mentioned in art. 16(2) of the DTAA are not attracted in the case of the appellant, the income of the appellant is taxable in USA and not in India. A perusal of s. 90 r/w art. 16 of the DTAA would show that s. 90 did not bar in any manner the operation of the relevant provision of DTAA in respect of income earned by the appellant in other country, with whom the Central Government has entered a DTAA. Therefore, income is taxable in USA and not in India. (AY. 2016-17)
Rajat Dhara v. DCIT (IT) (2024) 162 taxmann.com 902/229 TTJ 76 / 236 DTR 289 (Kol) (Trib)

1323 **S. 90: Double taxation relief-Foreign tax credit (FTC)-Form-67 filed before completion of assessment and after due date specified for furnishing return under section. 139(1)-Rejection of FTC is not justified-DTAA-India-Australia [S. 91, 139(1), 143(1), Rule 128, Form-67 Art. 24, Art. 226]**
The appellant, who was employed in Kenya, filed his Indian income tax return and claimed the benefit of FTC under section 90/91. However, the appellant inadvertently did not upload Form-67, which is required to claim FTC, along with the return. The appellant later uploaded Form-67 before the completion of the assessment proceedings. The FTC claim was rejected by revenue on grounds that the appellant failed to comply with the statutory obligation of filing Form-67 along with the return of income under section 139(1). On filing a writ petition, the Hon'ble High Court held that the returns were filed without FTC, however the same was filed before passing of the final assessment order and the filing of FTC in terms of the rule 128 is only directory in nature. The rule is only for the implementation of the provisions of the Act, and it will always be directory in nature. The Hon'ble High Court relied on the decision of Supreme Court in the case of *CIT v. G. M. Knitting Industries (P.) Ltd (2016) 71 taxmann.com 35/ (20015) 376 ITR 456 (SC)* which held that when the returns were filed without furnishing Form 3AA and the same can be filed the subsequent to the passing of assessment order. This decision applies to the case under consideration and therefore, the matter is remitted back to the revenue to make reassessment by taking in-to consideration the details of FTC filed by the appellant. The revenue is directed to give due credit to the Kenya income of the appellant and pass the final assessment order. (AY. 2019-20) (SJ)
Duraiswamy Kumaraswamy v. PCIT (2024) 296 Taxman 502 /460 ITR 615/ 336 CTR 108 (Mad)(HC)

1324 **S. 90: Double taxation relief-Valid registration certificate-Interest income earned from Indian companies -Denial of exemption under article 24 is not justified-DTAA-India-UAE [Art. 24(2)(b)(ii)]**
The appellant was a FPI and a tax resident of the UAE. It had claimed exemption from tax in India on interest income earned from debt securities by virtue of benefit provided under article 24 of the India-UAE DTAA. The CIT(A) denied the benefit of Article 24 on the ground that the mobile number entered '9999999999', being a fraud number,

the company was a fraud company and did not belong to the Abu Dhabi Government. The Hon'ble tribunal held that when the appellant has provided all other details to the Ld. AO, then he should have verified the PAN and the address provided in the return to see whether the appellant is an Abu Dhabi Government owned company i.e., Abu Dhabi Investment Authority. The appellant had shown its valid registration as category of foreign portfolio investor obtained with SEBI and holds a valid residency certificate and given the particulars of income, therefore, there is no reason to doubt that it is not the authority as mentioned in art. 24. Accordingly, the appellant is entitled to benefit, and denial of exemption is not valid. (AY. 2019-20)

Abu Dhabi Investment Authority v. DCIT (IT) (2024) 160 taxmann.com 104 /228 TTJ 721 /236 DTR 1 (Mum)(Trib)

S. 90: Double taxation relief-Capital gains-Sale of shares-Exempt from tax-DTAA-India-Mauritius. [S. 90(2), 90(2A) Art. 13, 27A] 1325

The Appellant claimed exemption from taxation of capital gains arising on sale of shares under article 13(4) of India-Mauritius DTAA. Though, the Assessing Officer has made various allegations to conclude that the assessee is a conduit entity, however, such conclusion is not backed by any substantive and cogent material brought on record. The TRC issued by the competent authority of a particular country determines the tax residency of a particular person/entity which is accepted by the Revenue in Circular No. 789, dt. 13th April 2000. Followed, *UOI v. Azadi Bachao Andolan (2003) 184 CTR 450, 263 ITR 706 (SC)*, *Blackstone Capital Partners (Singapore) VI FDI Three Pte. Ltd. v. Asstt. CIT (2023) 331 CTR 1 222 DTR 265, 452 ITR 111 (Delhi) (HC)*. Thus, the Hon'ble Tribunal held that since the departmental authorities have failed to establish that the assessee is a conduit company, the TRC issued by the competent authority in Mauritius would not only determine the residential status of the assessee, but also its entitlement under the treaty provisions. (AY. 2020-21)

Accion Africa-Asia Investment Co. v. ACIT (IT) (2024) 161 taxmann.com 582 / 228 TTJ 118 / 233 DTR 385 (Delhi)(Trib)

S. 90: Double taxation relief -Capital gains-Tax resident of Singapore-Capital gains on sale of shares of Indian Company-Denial of exemption is not justified-DTAA-India-Singapore. [S. 9(1)(i), Art. 13 (4)] 1326

The Appellant had been consistently filing its return of income in India and had been availing of the treaty benefits with respect to such income for all such years without being denied the treaty benefits in any of those years. The Dispute Resolution Panel could not have sustained the draft addition without assigning any reasons for drifting from the rule of consistency. It could, hence, be sufficiently established that the transaction, which the Ld. AO had alleged to be out of tax evasion and treaty shopping, was, in fact, a long-term investment decision by an entity, which had sufficient managerial and operational structure to run an entity based in Singapore. Therefore, denial of exemption is not justified. (AY. 2017-18)

Tyco Electronics Singapore Pte Ltd. v. Dy. CIT (IT (2024) 166 taxmann.com 491 (Delhi)(Trib)

1327 **S. 90 :Double taxation relief-Capital gains-Sale of shares-Tax Residency certificate issued by Mauritius tax authority is unquestionable-Not shell or conduit company-Beneficial owner of capital gains-Capital gains is exempt from taxation-The Ld. AO is directed to factually verify the aspect, if the shares were acquired after April 1, 2017 and sold prior to March 31, 2019, the benefit under article 13(3B) could be given to that extent. [Art. 13(3A), 27A]**

The appellant, a tax resident of Mauritius, was an investment holding company. It transferred unlisted equity shares acquired by it during FY 2015-16 and FY 2016-17 and the resultant capital gains were claimed exempt under Article 13 of the India- Mauritius DTAA. However, the Ld. AO was of the view that the company lacked commercial substance as all decisions relating to investment activities and management were taken outside Mauritius and that the entity was set up in Mauritius only for the purpose of claiming treaty benefit. The Ld. DRP held that the benefit of the Article 13(3B) would not be available to a conduit company. The Hon'ble Tribunal held that tax authorities in India could not go behind the tax residency certificate issued by another tax jurisdiction. The Central Board of Direct Taxes Circular No. 789 of April 13, 2000 (2000) 243 ITR 57 (St) clarified that tax residency certificate shall serve as sufficient evidence of the taxpayer's residence and beneficial ownership for applying the Double Taxation Avoidance Agreement. No cogent evidence had been brought on record to establish that the appellant was a shell or conduit company and not the beneficial owner under the tax treaty. The Ld. AO had, surprisingly, not invoked Chapter X-A despite his belief that the transactions could be treated as a tax-avoidance arrangement. There was nothing on record to suggest that the Ld. AO had invoked the General Anti-Avoidance Rules. The reasoning of the Ld. AO was without any substance, not backed by credible evidence in concluding that the appellant was not entitled to claim benefit under article 13(3B) in view of the restrictions imposed under the limitation of benefit clause of article. The Dispute Resolution Panel had misconceived the factual position and misconstrued the provisions in the treaty. As the appellant had acquired the shares prior to April 1, 2017, neither article 13(3A) nor article 13(3B) would apply. On the contrary, the appellant would be covered under article 13(4) of the tax treaty rendering the entire capital gains exempt from taxation. As applicability of article to the subject transaction was a misnomer, the reasoning of the Dispute Resolution Panel was unacceptable. The appellant was entitled to claim exemption under article 13(4) on the capital gains derived from sale of unlisted equity shares acquired prior to April 1, 2017. However, as the appellant submitted that in the earlier assessment year it had derived short-term capital gains on sale of equity shares and had claimed benefit under article 13(3B), the Ld. AO was directed to factually verify this aspect and, if the shares were acquired after April 1, 2017 and sold prior to March 31, 2019, the benefit under article 13(3B) could be given to that extent. (AY. 2019-20, 2020-21)

Leapfrog Financial Inclusion India (II) Ltd. v. ACIT (2024)113 ITR 370 / 155 taxmann.com 166 (Delhi)(Trib)

S. 90 : Double taxation relief-Foreign tax credit-Filing of Form 67 with certificates and statements is mandatory-Directory with respective to time-limit-DTAA does not prescribe filing requirement for foreign tax credit it will prevail over provisions of domestic law-Form, certificate and statements filed with return belatedly but be-fore actually processing or before final assessment made is sufficient compliance-Entitled to credit-DTAA-India-USA. [S. 6,90A, 91, 139(1) 139(4), R. 128(9), Form No 67, Art. 25, 26] 1328

The Hon'ble Tribunal held that article 25 of the DTAA entitles the appellant to claim credit against the U.S.A. taxes paid or deducted from the in-come, prescribing no filing compliance therefor. The compliance required under rule 128(9) was neither nullified by article 25 nor article 26 of the DTAA. Article 26 prescribes non-discrimination while dealing with additional or other requirements prescribed under domestic laws of the contracting State. Therefore, the contention that since the DTAA prescribed no filing requirement for foreign tax credit will prevail over the provisions of rule 128 prima facie failed. It is a well-settled law that the rules are sub-ordinate piece of legislation, enacted to facilitate the carrying out of the objective of main legislation, i. e., provisions of the Act. The very purpose and object of insertion of rule 128 was to allow foreign tax credit and it was so prescribed by sub-rule (1). Therefore, the mandate of sub-rule (9) was subservient to sub-rule (1). The insertion of rule 128 was under the provisions of section 295(2) (ha) of the Act which empowered the Board to prescribe procedure for granting of relief or deduction of any Income-tax paid in any foreign country outside India under section 90 or 90A or 91, against the In-come-tax payable under the Act. This ipso facto clarified that the compliance envisaged under sub-rule (9) was procedural in nature and that filing of form 67 with certificates and statements was mandatory as it relates to the essence of foreign tax credit claim to be allowed as matter of substance, but directory with respective to the time-limit within which it was to be made as it was merely a matter of convenience rather than substance. As the matter of fact, rule 128 prescribed no consequences for delayed compliance or non-compliance. The Hon'ble Tribunal held that filing of form 67, the certificate and statements as envisaged under sub-rule (8) at any time before it was actually processed or before the final assessment was actually made was sufficient compliance with sub-rule (9) of rule 128, and the appellant was entitled to claim foreign tax credit. (AY. 2019-20)

Akshay Rangroji Umale v. Dy. CIT (2024) 159 taxmann.com 210 / 110 ITR 5 (SMC) (SN) (Pune)(Trib)

S. 90: Double taxation relief-Investment fund-Capital gains- Conduit entity without any economic substance-Not justified in denying benefits under article 13 on long term capital gains-DTAA-India-Mauritius. [S. 9(1)(i)), 90(2) Art. 13(4)] 1329

Appellant, a company incorporated in Mauritius and was engaged in business of investment activities. During year under consideration, appellant transferred shares of Indian companies and thereby earned long term capital gains (LTCG) on such transfers and claimed LTCG as exempt as per article 13(4) of India-Mauritius Tax Treaty. The Ld. AO denied treaty benefits to appellant on the ground that appellant was a mere conduit entity without any economic substance. The Ld. CIT(A) affirmed the order of the AO. On appeal, the Hon'ble Tribunal held that appellant was an investment fund, which pooled capital from investors from various countries through series of funds investor vehicles/ feeder funds creating a master fund which was used for investment into various entities in India. Further, appellant was earlier also making investment and divestments and still held

investment in various other companies. There was no allegation of Ld. AO on basis of any evidence that any investment flowing from India was received for creating appellant. Since investments were held for over five years before they were transferred and day to day administrative activities of appellant company were as per law of land and except for suspicion there was no evidence with Ld. AO to rebut statutory evidence of presumption of genuineness of business activity of appellant on basis of TRC held by appellant, the Ld. AO was not justified in denying treaty benefits to appellant. (AY. 2018-19)
India Property (Mauritius) Co v. ACIT (2024) 114 ITR 1 / 208 ITD 129 (Delhi) (Trib.)

1330 **S. 90: Double taxation relief-Rule 128 is directory in nature and not mandatory and, thus, foreign tax credit could not be denied to appellant merely on ground that Form No. 67 was filed belatedly. [Rule 128, Form No 67]**
Appellant filed its return claiming credit of tax paid in USA. Ld. AO disallowed said credit on ground that appellant had not filed Form No. 67 within due date. The Ld. Commissioner (Appeals) allowed appellant's claim of foreign tax credit. The Hon'ble Tribunal held that since rule 128 is directory in nature and appellant had duly filed its Form No. 67, Commissioner (Appeals) has rightly directed Ld. AO to grant foreign tax credit. (AY. 2020-21)
DCIT v. Prabha Nageshwar Rachakondawar (2024) 207 ITD 162 (Nagpur) (Trib.)

1331 **S. 90: Double taxation relief-Tax credit-Tax paid in Kenia-Rule 128 was inserted by Income-tax (18th Amendment) Rules, 2016 and was made applicable with effect from 1-4-2017,-Could not be made applicable for relevant assessment years-Claim is allowed-DTAA-India-Kenya [S. 91, R. 128, Form No 67, Art. 25]**
Appellant executed certain project in Kenya and earned profits which were taxable in India as well as Kenya. Appellant filed return of income and claimed relief in respect of tax paid in Kenya as per section 90/91. The Ld. AO invoked rule 128 and denied said claim on ground that Form no. 67 was required for availing tax credit. The Hon'ble Tribunal held that rule 128 which was inserted by Income-tax 18th Amendment Rules, 2016 was made applicable with effect from 1-4-2017, thus, same could not be made applicable for relevant assessment years. Ld. AO is directed to allow credit of tax paid in Kenya after due verification and after affording an opportunity of being heard to appellant. (AY. 2015-16, 2016-17)
KEC International Ltd. v. DCIT (2024) 207 ITD 193 (Mum) (Trib.)

1332 **S. 90: Double taxation relief-Rate applicable to domestic companies-non-discrimination clause-Higher rate of tax prescribed for foreign company is not to be regarded as violation of non-discriminatory clause, i. e., article 26 of DTAA between India-France. [Art. 26]**
Reference was made to non-discrimination clause in the Treaty, as per which there should not be any discrimination between the domestic and the non-resident company. The Tribunal, however, referred to the Explanation in the Section 90, inserted in the IT Act with retrospective effect from 01-04-1962 as per which the higher tax rate in case of foreign company, should not be regarded as violation of non-discrimination clause. The Hon'ble Tribunal held that higher rate of tax prescribed for foreign company is not to be regarded as violation of non-discriminatory clause, i. e., article 26 of DTAA between India-France. Therefore, the Tribunal held in favour of revenue by dismissing the ground of the Appellant. (AY. 2021-22)
BNP Paribas v. ACIT (2024) 207 ITD 532 (Mum) (Trib.)

S. 90: Double taxation relief-Foreign tax credit-short credit without stating reasons-Matter remanded. 1333

The appellant had claimed the foreign tax credit during the year under consideration. However, the appellant was granted short credit. The appellant had, relying on the decision of Hon'ble HC in the case of *Wipro Ltd v. Dicot [2016) 382 ITR 179 (Karn)(HC),* explained that he was eligible to claim the foreign tax credit. However, the Ld. AO and CIT(A), had without giving any reasons, gave short credit to the appellant. The Hon'ble Tribunal, agreeing to the fact that the decision of *Wipro Ltd v. Dy. CIT [2016) 382 ITR 179 (Karn)(HC)* was applicable to the appellant, restored the matter to the file of the AO. *Dy. CIT v. Reliance Industries Ltd. (2024)109 ITR 180 (Mum)(Trib)*

S. 90: Double taxation relief-Foreign tax credit (FTC)-Filed Form No. 67 after due date specified for furnishing return under section 139(1) but before completion of assessment proceedings-Foreign tax credit (FTC) is allowed-DTAA-India-Australia [R. 128, Form No. 67, Art. 24] 1334

The Hon'ble Tribunal held that where the appellant claimed foreign tax credit (FTC) and filed Form No. 67 after due date specified for furnishing re-turn under section 139(1) but before completion of assessment proceedings. Filing of such Form No. 67 is not mandatory but a directory requirement. Moreso, when DTAA overrides the provision of the Act, the Rules cannot be contrary to the Act and hence, this right to claim FTC is a vested right of the appellant and cannot be denied. Therefore, appellant's FTC claim is to be allowed. (AY. 2018-19)

Niravsinh Kishoresinh Gehlot v. ITO (2024) 206 ITD 123(Ahd) (Trib)

S. 90: Double taxation relief-Foreign tax credit (FTC) cannot be disallowed for delay in filing Form 67 as filing of Form 67 is a directory requirement-DTAA-India-USA [R. 128(9), Art. 25] 1335

The Hon'ble Tribunal held that rule 128(9) of Income-tax Rules does not provide for disallowance of Foreign Tax Credit (FTC) in case of delay in filing Form 67. Filing of Form 67 is not mandatory but a directory requirement and DTAA overrides provisions of Act and rules cannot be contrary to Act. The Hon'ble Tribunal relying on the decision of *Ashish Agarwal v. ITO [2023] 155 taxmann.com 626/203 ITD 562 (Hyd. - Trib.)* allowed the credit of FTC claimed by the Appellant. (AY. 2020-21)

CES Ltd. v. DCIT (2024) 206 ITD 504 (Hyd) (Trib.)

S. 90 : Double taxation relief-Foreign tax-Non-furnishing of Form No. 67 before the due date under section 139(1) is not fatal to claim for foreign tax credit-Ld. AO is directed to allow foreign tax credit as per Form 67 filed after due verification. [R. 128(9), Form No 67] 1336

The appellant filed its return claiming foreign tax credit (FTC). The Ld. AO denied foreign tax credit (FTC) on ground that appellant had not filed Form No. 67 within due date of filing return. The Hon'ble Tribunal held that Rule 128(9) of Rules does not provide for disallowance of FTC in case of delay in filing Form No. 67. Filing of Form No. 67 is not mandatory but a directory requirement and that non-furnishing of Form No. 67 before due date under section 139(1) is not fatal to claim for FTC. The Hon'ble Tribunal relying on the decision of *Vinodkumar Lakshmipathi v. CIT (Appeals) NFAC,*

Delhi (2022) 145 taxmann.com 235 (Bang)(Trib) directed the Ld. AO to allow foreign tax credit as per Form 67 filed after due verification. (AY. 2021-22)
Deepak Shimoga Padmaraju (2024) 206 ITD 803 (Bang) (Trib.)

1337 **S. 90: Double taxation relief-A resident of Mauritius earning income from the transfer of shares of Indian companies should be subject to capital gains tax exclusively in Mauritius, rather than in India-Appeal of Revenue is dismissed-DTAA-India-Mauritius [Art. 13 (4)]**

The appellant is a limited liability company incorporated in Mauritius, and it had submitted the copy of the tax residency certificates issued by the Mauritius Tax Authorities for the relevant period during the assessment proceedings. It derived income by way of Capital gains from transfer of shares of Indian companies and claimed that such income was taxable only in Mauritius as per the DTAA between India and Mauritius.

The Ld. AO accepted the claim of the appellant and passed an order u/s 143(3) r. w. s. 144C (13) of the Income-tax Act, 1961 (the Act) allowing the benefit of the DTAA to the appellant. The Revenue filed an appeal against the order of the AO before the Tribunal. The Tribunal dismissed the appeal of the Revenue and upheld the order of the AO. The Tribunal held that the appellant was entitled to the benefit of the DTAA between India and Mauritius as it had submitted the tax residency certificates issued by the Mauritius Tax Authorities and thus being a Mauritius resident deriving income by way of gains from transfer of shares of Indian companies, it was liable to capital gains tax only in Mauritius and not in India as per paragraph 4 of Article 13 of the DTAA between India and Mauritius. It also noted that the AO had accepted the claim of the appellant in the assessment order as well as the remand report and there was no material to controvert the same. (AY. 2017-18)

Dy. CIT v. Battery Ventures VII (Mauritius) [2024] 109 ITR 65 (SN)(Delhi)(Trib)

1338 **S. 92B : Transfer pricing-International transaction-Arm's length price-Avoidance of tax-Interest on trade receivables-Interest rate on similar foreign currency receivables and advances as Libor + 200 Points-Adjustment on account of interest on trade receivables un-warranted-Payment for global and regional management-Restored to AO for fresh factual verification-Matter restored. [S. 92C]**

The Ld. TPO had made adjustment towards management fee on the ground that the assessee could not establish cost benefit from fee paid to AE and also failed to furnish necessary evidence to establish rendering of services by the AE. The Tribunal set aside the issue to the file of the Assessing Officer with a direction to re-examine the claim of the assessee in light of agreement between the parties and any other evidence that may be filed by the assessee to prove its claim. Further, the Tribunal held that for the purpose of benchmarking the interest receivable on outstanding receivable from AE, the LIBOR + 200 basis points is the appropriate rate of interest to be considered by the Assessing Officer, being the rate similar to the interest rate on foreign currency receivables and advances. (AY. 2018-19)

Kantar GDC India P. Ltd. v. Dy. CIT (2024) 164 taxmann.com 25 (Hyd)(Trib)

S. 92B : Transfer pricing-International Transaction-Arm's length price-Avoidance of tax-Interest on trade receivables-Interest rate on similar foreign currency receivables and advances as Libor + 200 Points-Adjustment on account of interest on trade receivables un-warranted-Payment for global and regional management-Restored to Assessing Officer for fresh factual verification. [S. 92C] 1339

That on the amendment to section 92B of the Income-tax Act, 1961, with retrospective effect from 1 April 2002, it was not open for the assessee to agitate the question whether or not the interest on outstanding receivables was an international transaction requiring separate benchmarking. That, the ends of justice would be met by accepting the interest rate on similar foreign currency receivables and advances as LIBOR + 200 basis points. Fol-lowing the order of coordinate bench in assessee's own case for AY 2018-19, the Hon'ble Tribunal held that the interests of justice would be met by restoring the issue of adjustments for global and regional management overhead allocation fee to the file of the Assessing Officer/ Transfer Pricing Officer for fresh factual verification as per law in view of the need for the assessee to file the additional documentary evidence in support of its claim. The assessee was to submit all the relevant material before the Officer. (AY. 2018-19)

Kantar GDC India P. Ltd. v. Dy. CIT (2024) 164 taxmann.com 25/112 ITR 575 (Hyd)(Trib)

S. 92B : Transfer pricing-International Transaction-Arm's length price-Avoidance of tax-Corporate Guarantee-Corporate guarantee commission to be charged at 0. 50 Per Cent. [S. 92CA 92E] 1340

The Appellant provided corporate guarantee on behalf of its subsidiaries and reported the same in the Form-3CEB. The learned TPO computed the ALP to 1. 9 per cent for the corporate guarantee of above Rs. 10 crores and thereby, computed the corporate guarantee at Rs. 2.08 crores and made the TP adjustment under section 92CA of the Act. Aggrieved the Appellant preferred an application before the learned DRP, where the panel did not find any merit in the Appellant's contention and passed the directions confirming the additions made by the learned TPO. Aggrieved from the DRP directions, the Appellant preferred an appeal before the Hon'ble Visakhapatnam Tribunal, where the Hon'ble Tribunal relying upon the decision of Hon'ble Bombay High Court in the case of *Everest Kanto Ltd (2015) (58 taxmann.com 254)* and the decision of the Hon'ble coordinate bench in assessee's own case for AY 2014-15 and 2016-17 followed the principle of consistency and restricted the adjustment to 0.5 percent on the corporate guarantee amount given to the AEs.

3F Industries Ltd. v Asst. CIT (2024) 169 taxmann.com 723/ 110 ITR 387 (Visakha)(Trib)

S. 92B : Transfer pricing-International Transaction-Arm's length price-Avoidance of tax-Corporate Guarantee-International Transactions-Guarantee fee at 0.5 per cent is justified-Deduction of tax at source-Matter remanded to the Assessing Officer. [S. 92C] 1341

Held that section 92B of the Act provides for the meaning of international transactions and under the Explanation, the expression international trans-action includes capital financing, include any type of long-term or short-term borrowings, purchase or sale of marketable securities or any type of advance, payments or deferred payment or receivable or any other debt arising during the course of business. Since the inclusive definition of inter-national transaction includes the activities relating to capital financing

and borrowings, new corporate guarantee transaction also falls under the category of international transactions. That the calculation of the corporate guarantee fee at 0.5 per cent. is justified and the excess amount added in the hands of the assessee is to be deleted. As regards the claim of the assessee that the Assessing Officer had not granted tax credit, the issue is restored back to the file of Assessing Officer for necessary verification. (AY. 2018-19)

Tega Industries Ltd. v. AUI (2024) 161 taxmann.com 714/ 111 ITR 71 (SN)(Kol)(Trib)

1342 **S. 92B : Transfer pricing-International Transaction-Arm's length price-Avoidance of tax-Distributor of products manufactured by its AE-AMP expenditure incurred in India to promote brand-Not constitute international transaction requiring any TP adjustment. [S. 92C]**

Assessee company is a wholly owned subsidiary of Kellog USA and is a distributor of products manufactured by its AE and also manufactures its own products in India under license from AE and, thus, incurred AMP expenditure in India for promotion of the brand. The learned TPO made an adjustment to the in-come of the assessee on account of AMP expenditure incurred in India. On appeal before the Hon'ble Mumbai Tribunal, the Hon'ble Tribunal held that the Tribunal in earlier years had consistently held that AMP expenditure incurred by the assessee in India cannot come within the purview of the international transaction. Further, the assessee has also submitted that since there is no arrangement/agreement between the assessee and the AE for incurring such expenditure to promote the brand of the AE, it cannot be said that there is an international transaction relating to AMP expenditure. Therefore, in view of decision in assessee's own case for earlier assessment years, since apart from being a distributor of products manufactured by its AE, assessee manufactured its own products in India under license from AE, the Hon'ble Tribunal held that the AMP expenditure incurred by assessee in India to promote brand would not constitute international transaction requiring any TP adjustment. (AY. 2018-19)

Kellogg India (P.) Ltd. v. ACIT (2024) 204 ITD 441 (Mum) (Trib.)

1343 **S. 92BA: Transfer pricing-Specified domestic Transaction-Arm's length Price-Avoidance of tax-Excluded from definition with effect from 1-4-2017-Omission has retrospective effect-Addition is deleted. [S. 40A(2)(b)]**

The Hon'ble Ahmedabad Tribunal held that by virtue of deletion by the Finance Act 2017, with effect from 1 April 2017 of clause (i) of section 92BA of the Act, the ambit of section 40A(2)(b) of the Act is not available. Accordingly, the upward adjustment made by the learned Transfer Pricing Officer in respect of the arm's length price of the specified domestic trans-actions are deleted. (AY. 2015-16)

Asiatic Colour Chem Ind. Ltd. v. Jt. CIT (2024) 116 ITR 7 (41 SOT 21) (SN)(Ahd)(Trib)

S. 92C : Transfer pricing-Arm's length price-Avoidance of Tax-International Transaction-AMP expenses-High Court held that approach of TPO of determining ALP of such AMP expenditure either on BLT bases or TNMM could not be sustained-SLP is granted to the Revenue. [S. 92B, Art. 136] 1344

In transfer pricing proceedings, learned TPO construed that AMP expenses incurred by assessee were international transaction and applied Bright Line Test to make addition. The Hon'ble Delhi Tribunal deleted said additions holding that since the learned TPO had not established that there was an international transaction entered into by assessee by incurring a higher AMP expenditure, approach of the learned TPO of determining ALP of such AMP expenditure either on BLT bases or TNMM could not be sustained. The Hon'ble Delhi High Court in view of judgments in *Sony Ericsson Mobile Communications India (P.) Ltd. v. CIT [2015] 231 Taxman 113/374 ITR 118 (Delhi)* and *Maruti Suzuki India Ltd. v. CIT [2016] 237 Taxman 256/381 ITR 117 (Delhi)*, held that no substantial question of law arose against order of the Hon'ble Tribunal. Special leave petition filed against order of Hon'ble High Court is granted. (AY. 2012-13)

PCIT v. Yakult Danone India (P.) Ltd. (2024) 299 Taxman 452 (SC)

Editorial: PCIT v. Yakult Danone India (P.) Ltd(2023) 154 taxmann.com 470 (Delhi) (HC)

S. 92C : Transfer pricing-Arm's length Price-Avoidance of Tax-International Transaction-Interest on receivable-Credit agreed between parties was 30 days-Extra credit allowed could be considered as an independent international transaction and same be compared with internal CUP being average cost of total funds available to assessee-SLP of revenue is dismissed due to low tax effect-Question of law is kept open. [Art. 136] 1345

Assessee received certain amount on account of Interest on receivables wherein Credit agreed between assessee and its AEs was 30 days. The learned TPO pointed out that working capital adjustment was already made and therefore, no addition should be made on account of interest on receivables because it was not an independent transaction and it should be considered together as per rule 10A(d). The Hon'ble Bangalore Tribunal held that extra credit allowed could be considered as an independent inter-national transaction and same be compared with internal CUP being aver-age cost of total funds available to assessee and directed the learned TPO to find out cost of total funds available to assessee and same were to be adopted as internal CUP for benchmarking of this independent international transaction i.e. allowing extra credit in addition to agreed credit period of 30 days. The Hon'ble Karnataka High Court upheld order of the Hon'ble Tribunal. On SLP, revenue submitted that this appeal had to be dismissed on ground of low tax effect as being covered by Circular No. 17 of 2019 dated 8-8-2019 issued by Department of Revenue, Ministry of Finance. Low tax effect SLP of Revenue is dismissed. Question of law is kept open. (AY. 2012-13)

PCIT v. AMD India (P.) Ltd (2024) 298 Taxman 196 (SC)

Editorial: PCIT v. AMD India (P.) Ltd (2018) 98 taxmann.com 512 (Karn)(HC)

1346 **S. 92C : Transfer pricing-Arm's Length Price-Avoidance of Tax-International Transaction-Transfer Pricing Officer is not empowered to hold transaction as sham Transaction-The questions of law with respect to the powers and jurisdiction of Transfer Pricing Officer are kept open for being considered in an appropriate case. [S. 92CA, Art. 136]**

The Hon'ble Hyderabad High Court affirming the order of the Hon'ble Hyderabad Tribunal has held that the learned Transfer Pricing Officer is not empowered to hold transaction as sham transaction. SLP of Revenue is dismissed. However, the questions of law with respect to the powers and jurisdiction of Transfer Pricing Officer are kept open for being considered in an appropriate case.

CIT v. LGE & CNCC (Joint Venture) (2024) 297 Taxman 293/461 ITR 266 (SC)

Editorial : CIT v. IGE & CNCC (Joint Venture)(2015) 64 taxmann.com 484 (Hyd)(HC)

1347 **S. 92C : Transfer pricing-Arm's length Price-Avoidance of Tax-International Transaction-Selection of Comparables-Companies excluded by Tribunal after considering material on record-Finding of fact-SLP of Revenue is dismissed. [Art. 136]**

Hon'ble Delhi High Court dismissed the Department's appeal arising out of the order of the Hon'ble Delhi Tribunal contending that it had erred in excluding the three companies from the list of comparables, holding that no question of law arose. Aggrieved, the Revenue preferred a SLP before the Hon'ble Supreme Court, where the same was dismissed. Followed, *CIT v. Microsoft India (R And D) Pvt. Ltd. (2023) 456 ITR251 (SC)* (AY. 2011-12, 2012-13)

PCIT v. Microsoft India (R And D) Pvt. Ltd. (2024) 464 ITR 587 (SC)

Editorial : PCIT v. Microsoft India (R And D) Pvt. Ltd(2021) 431 ITR 483 (Delhi)(HC)

1348 **S. 92C : Transfer pricing-Arm's length Price-Avoidance of Tax-International Transaction-Online market support services-Allocation of Expenses-Expenditure for unallocable costs could be allocated on basis of proportionate turnover of concerned segment-Open to accept one or other principle i. e. turnover method or headcount method-Choice of assessee in relying upon headcount principle per se could not be rejected-SLP of Revenue is dismissed due to low tax effect. [Art. 136]**

Assessee is engaged in online market support services and reported its international transactions for receipts for services rendered. A Reference was made to learned TPO who applied TNMM to benchmark international trans-actions and arrived at ALP and while arriving at ALP, the learned TPO allocated certain common expenditure wherein tax authority applied first principle of apportionment, which resulted in proportionate allocation of expenditure attributable to concerned segments. After completion of this step, a sum of Rs. 9. 79 crores remained as un-allocable costs. For this, assessee sought to use "headcount" method for allocation as allocation principle to ascribe segment to which expenses were to be considered. However, assessee's arguments with respect to application of 'headcount' basis was rejected by the learned TPO, learned DRP and later by Hon'ble Tribunal. Hon'ble High Court held that since tax authorities broadly agreed that expenditure for unallocable costs could be allocated on basis of proportionate turnover of concerned segment and having done so, alternative was open to accept one or other principle i. e. turnover method or headcount method therefore, choice of assessee in relying upon headcount principle per se could not be rejected. Since tax

amount involved in instant SLP was less than Rs. 2 crores, SLP was to be dismissed on account of low tax effect. (AY. 2008-09)
DCIT v. Fujitsu India (P.) Ltd. (2024) 300 Taxman 447 (SC)
Editorial : Fujitsu India (P.) Ltd. v. Dy. CIT (2019) 102 taxmann.com 487 (Delhi)(HC)

S. 92C : Transfer pricing-Arm's length price-Avoidance of Tax-International transaction-Comparable-Gains arising due to fluctuation in rate of foreign exchange-Income-Safe Harbour 1349
The Hon'ble Delhi High Court held that the Safe Harbour notification dated September 18, 2013, relied upon by the Revenue was prospective in nature and did not apply to the assessment year in question. Even otherwise the decisions relied upon by the Hon'ble Tribunal in the order covered this issue in favour of the assessee as far as the assessment year in question was concerned. Therefore the order of the Hon'ble Tribunal is affirmed. (AY. 2009-10)
PCIT v. Fiserv India Pvt Ltd (2024)470 ITR 145 (Delhi)(HC)

S. 92C : Transfer pricing-Arm's length Price-Avoidance of tax-International Transaction-Foreign exchange gains/loss-Operating income/loss is proper-Comparable-Exclusion of comparable is proper. [S. 260A] 1350
The Hon'ble Delhi High Court held that the Hon'ble Tribunal was right in the categorisation of the foreign exchange gains and loss as operating income or operating loss. Further, the Hon'ble High Court also held that where assessee-company rendered software development services to its AE and selected comparable company was in business of software development services as well as in sale of software products but segmental information was not available, said company was to be excluded from comparable list. (AY. 2011-12)
PCIT v. Global Logic India Ltd. (2024) 470 ITR 149 (Delhi)(HC)

S. 92C : Transfer pricing-Arm's length Price-Avoidance of Tax-International Transaction-Selection of Comparables-Determination of Arm's Length Price based on examination of entire material on record-No question of law. [S. 260A] 1351
The Hon'ble Delhi High Court while dismissing the appeal of the Revenue, held that the selection of comparables for determination of the arm's length price of an international transaction has to be carried out on a case-to-case basis. The order clearly showed that the Hon'ble Tribunal had not just followed earlier orders to maintain consistency but also examined the entire material on record to ascertain the comparability of each of the-comparables with the case of the assessee pertaining to the assessment years 2007-08 to 2009-10. It had not been shown that the Hon'ble Tribunal committed any perversity in reaching the conclusion it reached in the matter. The Hon'ble High Court affirmed the order of the Hon'ble Tribunal. (AY. 2011-12)
PCIT v. Chrys Capital Investment Advisors (India) Pvt. Ltd. (2024) 469 ITR 589 (Delhi)(HC)

S. 92C : Transfer pricing-Arm's length Price-Avoidance of Tax-International Transaction-Comparable-No substantial question of law. [S. 260A] 1352
The Hon'ble Delhi High Court while dismissing the appeal of the Revenue held that the appeal was confined to the direction issued by the Hon'ble Tribunal to exclude

four comparables. Concerning the four comparables in issue, the Hon'ble Tribunal had returned findings of fact. No question of law arose from its order. (AY. 2008-09)
PCIT v. Mentor Graphics (India) Pvt. Ltd. (2024)469 ITR 524 (Delhi)(HC)

1353 **S. 92C : Transfer pricing-Arm's length price-Avoidance of Tax-International Transaction-Comparable-Advertisement and marketing-No substantial question of law. [S. 92CA, 260A]**
The Hon'ble Delhi High Court held that the amount spent on advertising, marketing and promotion activities by the assessee and compensation for this expense was, according to the Hon'ble Tribunal, received by the assessee in terms of higher profitability for the product sold. Further, even according to the Transfer Pricing Officer, the advertising, marketing and promotion expenditure incurred by the assessee resulted in increased sales in India for products, albeit developed by the associated enterprise but sold by the assessee. The fact that the comparables chosen by the learned Transfer Pricing Officer had a net margin lower than that registered by the assessee would persuade one to hold that no upward adjustment concerning advertising, marketing and promotion expenses ought to have been made. Order of Tribunal is affirmed. (AY. 2011-12)
PCIT v. Sony India Pvt. Ltd. (2024)469 ITR 495 (Delhi)(HC)

1354 **S. 92C : Transfer pricing-Arm's length price-Avoidance of tax-International Transaction-Selection of comparable-Software development services and sale of software products-Cannot be comparable-Employee cost filter-Matter remanded to the Tribunal. [S. 92CA(3), 254(1), 260A]**
Assessee-company rendered software development services. Selected company derived its revenue from both software development services and sale of software products. Said company could not be selected as comparable. Since question whether business model was different and therefore selected company would not be an appropriate comparable uncontrolled entity had not been considered by the Hon'ble Tribunal, therefore, order rejecting challenge to inclusion of selected company as comparable was erroneous. The Hon'ble Tribunal inadvertently did not adjudicate upon inclusion/exclusion of said companies in final set of comparable, matter was to be remanded back to the Hon'ble Tribunal for deciding afresh assessee's objections (AY. 2007-08)
Alcatel Lucent India Ltd. v. Dy. CIT (2024) 341 CTR 953 / 167 taxmann.com 595/ (2025)472 ITR 22 (Delhi)(HC)

1355 **S. 92C : Transfer pricing-Arm's length price-Avoidance of tax-International transaction-Order in conformity with directions of Supreme Court guidelines-No substantial question of law. [S. 260A]**
The Hon'ble Bombay High Court, dismissing the appeal had not refused to scrutinise the Hon'ble Tribunal's findings on the arm's length price. The Hon'ble High Court had considered the matter on the merits and concluded that no substantial questions of law arose. The order passed in the appeal was in conformity with the directions of the Hon'ble Supreme Court. Followed, *PCIT v. PTC Software (I) (P) Ltd (2019) 101 taxmann.com 117 (Bom)(HC)*
PCIT v. Johan Deere India Pvt Ltd (2024)467 ITR 127 (Bom)(HC)

S. 92C : Transfer pricing-Arm's length price-Avoidance of tax-International transaction-Most appropriate method-TNMM-CUP Method-Export of rice-Order of Tribunal accepting the method adopted by the appellant is affirmed-No substantial question of law. [S. 260A] 1356

Assessee had applied TNMM but the learned TPO proceeded to apply the CUP method and conducted a search on the Bloomberg database to find the sale price of rice. Without ascertaining or explaining in detail whether the rates were for products exported from India or from any other country or specifying whether the rates relate to controlled or uncontrolled transactions or whether it relates to retail or wholesale market, the learned TPO simply proceeded on the basis of Bloomberg database. Assessee also submitted that it realized more price on exports than the rates quoted by the custom authorities. The learned DRP also did not accept assessee's objections in its entirety. The Hon'ble Mumbai Tribunal accepted that these were the mistakes in the order of learned TPO, inasmuch as the learned TPO without realizing the factual aspects, simply rejected the method adopted by assessee. The Hon'ble High Court affirmed the order of Hon'ble Tribunal. No substantial question of law. (AY. 2012-13)

PCIT v. Phoenix Comtrade (P) LTD. (2024) 339 CTR 294 / 162 taxmann.com 99 (Bom)(HC)

S. 92C : Transfer pricing-Arm's length price-Avoidance of tax-International transaction-TNMM-CUP method-Payment of royalty-Detrimental to the interest of both assessee and Revenue-Addition was deleted. [S. 260A] 1357

The assessee-company was engaged in the business of manufacture and sale of internal combustion engines, spares, components (including bought-outs) thereof & generating sets, service of engines & gensets/generating sets & allied equipment, etc. The assessee made payment of royalty to its foreign based AE for providing technical know how and technical knowledge for manufacturing of engines to be sold to the customers. The assessee benchmarked this transaction alongwith other international transactions of export sales under overall 'manufacturing segment'. It used TNMM to benchmark all its international transaction. The Transfer Pricing Officer segregated the international transaction of payment of royalty from other international transactions of the assessee and used CUP method to benchmark said transaction. Tribunal up held the order of the Transfer Pricing Officer. On appeal High Court held that where the assessee had used TNMM to benchmark all its international transactions, it was not open to TPO to subject only one element, i.e., payment of royalty for use of technology, to an entirely different CUP method as this would lead to chaos and be detrimental to interests of both assessee and revenue. Appeal of the assessee is allowed. Adjustment was deleted. (AY. 2015-16 to 2017-18)

Cummins India Ltd v. ACIT (2023) 294 Taxman 619/ 335 CTR 387 /(2024) 470 ITR 184(Bom)(HC)

Editorial : SLP of revenue dismissed, ACIT v. Cummins India Ltd [2025] 304 Taxman 604 / 476 ITR 158 (SC)

S. 92C : Transfer pricing-Arm's length price-Avoidance of tax-International transaction-Most appropriate method-TNMM-CUP-Most appropriate method-Order of the Tribunal is affirmed-No substantial question of law. [S. 260A] 1358

On appeal the Hon'ble Tribunal held that the assessee had demonstrated the kind of services rendered by it to its AEs as well as non-AEs by placing reliance on agreements

and it was argued before the Hon'ble Tribunal that the assessee deals with AEs as well as independent parties being network partners in all regions of the world wherever there were no affiliates of the parent company of the assessee; that agreements of the assessee with its AEs and non-AEs were in equal ratio; that the learned DRP had rejected internal TNMM because the assessee had not carried out an internal FAR and proper identification of revenue and costs vis-à-vis the audited accounts. With these observations, the Hon'ble Tribunal set aside the order passed by the learned TPO and learned AO and directed the assessee to carry out internal FAR and identify proper revenue and costs vis-à-vis the audited ac-counts to establish internal comparability under TNMM as most appropriate method. The Hon'ble Tribunal also held that if the assessee failed to demonstrate the internal FAR and identification of proper revenue and costs vis-à-vis the audited accounts, it would file details in respect of external comparables under TNMM as most appropriate method and the TPO would decide the issue as per law. During the pendency of this appeal, the learned TPO vide order dt. 31st Oct., 2019 held that it is the external TNMM which should be applied as the most appropriate method. Reasoning of the Tribunal in the impugned order is robust and without any flaw. For, the ultimate aim of the transfer pricing exercise is to determine an accurate value of the ALP for the purpose of taxation and the appellate authorities are not pre-cluded from adopting a method different from that adopted by the assessee in transfer pricing report. No substantial question of law. (AY. 2008-09)
PCIT v. Hellmann Worldwide Logistics India (P) Ltd [2023] 155 taxmann.com 44 / (2024) 337 CTR 335 (Delhi)(HC)

1359 **S. 92C : Transfer Pricing-Arm's length price-Avoidance of tax-International transaction-Net Margin Method-Advertisement, marketing and promotion expenses-Comparison-Application of BLT tool was wrong-No substantial question of law. [S. 260A]**
There was no advertising agreement obtaining between the assessee and its AE. The last agreement was entered into on 1st April, 2005, which apparently, had come to an end. The learned TPO had used comparables furnished by the assessee for employing the BLT tool, in ascertaining the ALP qua AMP activities. Concededly, the assessee's net operating margin was 3.29 per cent, whereas, the arithmetic mean of the net operating margin of comparables chosen by the learned TPO was 2.09 per cent. The learned TPO had accepted other international transactions under the TNMM em-ployed by the assessee, except for AMP activities. The Hon'ble Delhi Tribunal deleted the said addition. On appeal before the Hon'ble Delhi High Court, the Hon'ble High Court held that the comparables chosen by the learned TPO had a net margin lower than that registered by the assessee, it would persuade the Court to hold that no upward adjustment concerning AMP expenses ought to have been made. Lastly, the application of the BLT tool, by the learned TPO, in determining ALP, injected the order issued by him, which was incidentally approved by the learned DRP, with a legal error. No substantial question of law arises for consideration. Followed *Sony Ericsson Mobile Communications India (P) Ltd. v. CIT (2015) 276 CTR 97/ 117 DTR105/ 55 taxmann.com 240 (Delhi) (HC).* (AY. 2007-08)
PCIT v. Sony India (FP) Ltd. (2024) 336 CTR 129 (Delhi)(HC)

S. 92C : Transfer Pricing-Arm's length price-Avoidance of tax-International transaction-Intra-Group services-Application of Arm's Length Price adjustment resulting in reduction of income chargeable to tax-Transfer pricing provisions cannot be applied. [S. 92(1), 92(3), 92B, 260A] 1360

The learned Dispute Resolution Panel having treated the arm's length price of the intra-group services received by the assessee as nil, the Hon'ble Del-hi Tribunal held that the price paid for these intra-group services was to be taken out from the computation of remuneration receivable in respect of information technology enabled services rendered by the assessee. The Hon'ble Tribunal held that when as a result of computation of income on the basis of the arm's length price, the income of the assessee was lowered or the loss was increased, the provisions of computation of income could not be on the basis of the arm's length price, that viewed in this perspective, on the facts, the determination of the arm's length price of the intra-group service at nil value did not lower the profits of the assessee inasmuch as the revenue of the assessee from the information technology enabled services would reduce correspondingly, and more than the adjustment, as a result of loss of mark up as well, that the computation of income from international transactions on the basis of arm's length price, in the given situation, would result in lowering the income of the assessee vis-a-vis the in-come "computed on the basis of entries made in the books of account in respect of the previous year in which the transactions were entered into", that therefore, the transfer pricing provisions could not be invoked in respect of intra group services, which formed part of the cost base of the assessee. Accordingly, the Hon'ble Tribunal had held that section 92(3) of the Act did not permit and prohibited computation of income on the basis of arm's length price in such a situation because the application of arm's length price adjustment would result in erosion of Indian tax base as visualized by the scheme of section 92(3) of the Act. On appeal by the Revenue, the Hon'ble High Court dismissing the appeal, held that no exception could be taken to the view as expressed by the Hon'ble Tribunal. No question of law arose.

PCIT v. Mercer Consulting India Pvt. Ltd. (2024) 465 ITR 381/ 161 taxmann.com 420 (Delhi)(HC)

S. 92C : Transfer Pricing-Arm's length price-Avoidance of tax-International transaction-Written Down Value of assets as may be reflected in books would not be liable to be taken into consideration while answering issue of ALP-No substantial question of law. [S. 260A, R. 10B] 1361

Assessee procured cranes from its Associated Enterprise (AE). While computing ALP, the learned TPO took into consideration Written Down Value (WDV) of assets as reflected in books of account of AE. The Hon'ble Delhi Tribunal held that WDV methodology is to be rejected bearing in mind undisputed mandate of rule 10B which requires identification of ALP from point of view of uncontrolled price method as being referable to a comparable uncontrolled transaction. The Hon'ble Tribunal also held that in any case WDV as may be reflected in books of account would clearly not be liable to be taken into consideration while answering issue of ALP. The Hon'ble Delhi High Court affirmed the order of the Hon'ble Tribunal. (AY. 2012-13)

PCIT v. Sarens Heavy Lift India (P.) Ltd. (2024) 299 Taxman 293 (Delhi)(HC)

1362 **S. 92C : Transfer Pricing-Arm's length price-Avoidance of tax-International transaction-AMP expenses-Bright Line Test (BLT) could not be applied for benchmarking AMP expenses-No substantial question of law. [S. 92B, 260A]**

The learned TPO held that expenses were incurred by assessee for creating marketing intangibles, which belonged to AE. The learned TPO thus, treated AMP expenses as international transaction and benchmarked same by applying Bright Line test. The Hon'ble Tribunal rejected bright line approach and deleted additions made by the learned TPO-It was noted that Hon'ble Tribunal had followed the Hon'ble High Court's decision in *Sony Ericsson Mobile Communications India (P) Ltd. v. CIT (2015) 231 Taxman 113/ 374 ITR 118 (Delhi)(HC)* to reject application of bright line test. The Hon'ble High Court affirmed the order of the Hon'ble Tribunal. No substantial question of law. (AY. 2006-07)

PCIT v. Adidas India Marketing (P.) Ltd. (2024) 298 Taxman. 44 (Delhi)(HC)

1363 **S. 92C : Transfer Pricing-Arm's length price-Avoidance of tax-International transaction-TNMM-CUP method-TNMM method is considered as most appropriate method-Order of Tribunal is affirmed-No substantial question of law. [S. 260A, R. 10B(2)]**

Assessee is engaged in international transactions of sale of Paclitaxel and Disodium Pamidronate. Assessee adopted TNMM as most appropriate method. The learned TPO rejected TNMM and came to conclusion that it would be CUP method which was liable to be viewed as most appropriate method for purpose of determining ALP and made TP adjustment. The learned Commissioner(Appeals) held that the learned TPO had merely re-lied upon prices prevailing in different markets and regions and had clearly failed to bear in mind factors imbibed in rule 10B(2) and that the learned TPO had simply used database of export rates maintained by IBIS which did not satisfy stringent conditions of comparability regarding CUP Method and since the learned TPO had not satisfied even these basic requirements, TNMM was MAM and since net margins earned from sale of Paclitaxel and Disodium Pamidronate being higher at 14. 10 per cent as against other sales at 10. 90 per cent, international transaction of sale of Paclitaxel and Disodium Pamidronate satisfied arm's length principle and it did not warrant an addition as done by the learned TPO. The Hon'ble Tribunal upheld order passed by learned Commissioner(Appeals). Further, the Hon'ble High Court affirmed the order of the Hon'ble Tribunal.

PCIT v. Fresenius Kabi Oncology Ltd (2024) 298 Taxman 139/ 467 ITR 532 (Delhi)(HC)

1364 **S. 92C : Transfer pricing-Arm's length price-Avoidance of tax-International transaction-Comparable-Foreign AE can be taken as a tested party for purpose of establishing ALP of assessee. [S. 92E, 260A]**

The assessee entered into international transactions and selected foreign AE as tested party for TP analysis. The learned TPO opined that foreign AE could not be taken as tested party. On appeal, the Hon'ble Tribunal held that foreign AEs can be treated as tested parties. On further appeal to the Hon'ble High Court, the Hon'ble High Court affirmed the order of the Hon'ble Tribunal. (AY. 2015-16)

PCIT v. ITC Infotech India Ltd (2024) 298 Taxman 46 (Cal)(HC)

S. 92C : Transfer Pricing-Arm's length price-Avoidance of tax-International Transaction-Comparable-Employee cost filter-Different business model cannot be accepted as comparable-Extraordinary event of amalgamation cannot be accepted as comparable-Company engaged in KPO services cannot be accepted as comparable. [S. 260A] 1365

The Hon'ble Bombay High Court while dismissing the appeal of the Revenue held that where assessee was rendering IT enabled services to its AE, a company which outsourced services to be rendered by it and thus had out-sourcing business model, could not be accepted as comparable. A company in whose case extraordinary event of amalgamation took place during relevant year, was not acceptable as comparable. Where assessee was rendering IT enabled services to its AE, a company engaged in providing KPO services could not be accepted as comparable. (AY. 2009-10)

CIT v. John Deere India (P.) Ltd(2024) 298 Taxman 115 (Bom)(HC)

S. 92C : Transfer Pricing-Arm's length price-Avoidance of tax-International transaction-Distribution and sale of cosmetic product-Comparable –Rule of consistency-Order of Tribunal rejecting the comparable is affirmed. [S. 260A] 1366

Assessee-company is engaged in distribution and sale of cosmetic products. In order to benchmark its international transactions, assessee selected certain comparables. The learned TPO rejected certain comparables selected by assessee and selected one company, Meedicare Ltd, as comparable thereby making upward ALP adjustment. The Hon'ble Tribunal held that Medicare Ltd could not be considered as comparable entity. On further appeal to the Hon'ble High Court, the Hon'ble High Court held that similar matter had been resolved inter parties for assessment year 2014-15 where-in Medicare Ltd had been excluded from list of comparables to determine ALP and upward adjustments of income proposed had not been undertaken as well. Following the rule of consistency, the appeal of Revenue is dismissed. (AY. 2019-10 to 2012-13)

PCIT v. Oriflame India (P.) Ltd (2024) 298 Taxman 124 (Delhi)(HC)

S. 92C : Transfer Pricing-Arm's length price-Avoidance of tax-International transaction –Research and technical services-Comparable-Multiyear Data-Cannot be compared with companies which were doing business for many years. [S. 260A] 1367

The Hon'ble Bombay High Court while dismissing the appeal of the Revenue held that comparison has to be made between two equals. Where assessee-company was engaged in rendering research and technical services and had started its business in relevant financial year, it could not be compared with companies which were doing business for many years. (AY. 2008-09)

PCIT v. Radhashir Jewellery Co. (P.) Ltd (2024) 298 Taxman 754 (Bom)(HC)

S. 92C : Transfer Pricing-Arm's length price-Avoidance of tax-International Transaction-Inconsistent finding-Matter remanded to the Tribunal for considering appeal afresh. [S. 254(1), 254(2), 260A] 1368

The Hon'ble Tribunal had firstly observed that RPM as adopted by assessee would clearly be applicable, however, in very next paragraph, it had proceeded to undertake quantification of arm's length price in relation to AMP expenditure, since aforesaid

observations were clearly inconsistent and in-compatible, matter was to be remanded for considering appeal afresh. (AY. 2008-09)
Haier Appliances India (P.) Ltd v. Dy. CIT (2024) 298 Taxman 228 (Delhi)(HC)

1369 **S. 92C : Transfer Pricing-Arm's length Price-Avoidance of Tax-International Transaction-Comparables-Exclusion of companies with large functional and segmental dissimilarities-Appreciation of facts-No substantial question of law. [S. 92CA(3), 260A]**
The Hon'ble Delhi High Court held that there was no error in the decision of the Hon'ble Tribunal in rejecting the company 'Infosys BPO' as a comparable since it was functionally dissimilar to the assessee as it was largely en-gaged in software development, assuming all risks leading to higher profits, which was not in the case of the assessee. That the other comparable rightly rejected by the Hon'ble Tribunal was the company ('A') which had high on-site development expenses whereas the assessee was engaged only in offshore activities and therefore, the two were not comparable on functional level. The learned Transfer Pricing Officer had failed to analyse as to how the engineering design services of A could be compared with low end information technology enabled services of the assessee and had not discussed its segmental details. That the high end knowledge process out-sourcing services provider could not be compared with the information technology enabled services, which fell under the category of business process outsourcing services provider. The comparable e-Clerx was a leading knowledge process outsourcing company founded in the year 2000, and by the assessment year 2008-09, it had reached an employee strength of about 2000. It focussed on automation and process re-engineering in order to eliminate wasteful steps, and to automate repetitive ones, so as to minimize the need for human intervention and present their clients costs savings, which exceeded those from simple wage arbitrage, which in turn reduced the need for costly, high skilled resources and gave it ability to scale solutions quickly, both for existing clients and also for new ones. In contrast, the assessee had employed fresh young graduates, engaged in simply punching in data. That the findings as regards rejection of the three comparables being findings of fact and there being no proposed question alleging any perversity, no substantial question of law arose.
PCIT v. Future First Info. Services Pvt. Ltd. (2024)462 ITR 157 (Delhi)(HC)

1370 **S. 92C : Transfer pricing-Arm's length Price-Avoidance of Tax-International Transaction-Net margin method-Identical with earlier years-No substantial question of law. [S. 260A]**
Dismissing the appeals of the Revenue the Hon'ble Delhi High Court held that the issues in the appeals for the assessment years 2012-13 and 2013-14 were pari-materia with those that arose in the assessment year 2007-08 to assessment year 2010-11. The Department did not prefer an appeal against such order dated October 22, 2018 passed by the Hon'ble Tribunal and the order had attained finality. The Hon'ble Tribunal had, in sum, sought to re-examine the issue, in the light of the directions contained therein. Therefore, the appeals for the assessment years 2012-13 and 2013-14 did not give rise to any question of law. (AY. 2012-13, 2013-14)
PCIT v. Sumitomo Corporation India Pvt Ltd (2024)462 ITR 98 (Delhi)(HC)

S. 92C : Transfer pricing-Arm's length Price-Avoidance of Tax-International Transaction - AMP expenses incurred for products of AE- TPO comparables had net margin lower than that selected by assessee - No upward adjustment warranted [S. 92CA, 260A] 1371

Assessee incurred Advertising, Marketing and Promotion ("AMP") expenses on behalf of its Associated Enterprise. Assessee claimed that it had received compensation for AMP expenses in terms of higher profitability for products. The learned Transfer Pricing Officer ("TPO") rejected Assessee's claim and made addition on account of AMP expenses. The Hon'ble Tribunal accepted Assessee's claim and deleted addition on AMP expenses made by the TPO. The Hon'ble High Court dismissed Revenue's appeal t and held that Assessee had received compensation for AMP expenses incurred by it in terms of higher profitability on products sold and the fact that comparables chosen by learned TPO had net margin lower than that selected by Assessee, no upward adjustment was required. (AY. 2008-09)

PCIT v. Sony India (P.) Ltd (2024) 297 Taxman 118 (Delhi)(HC)

S. 92C :Transfer pricing adjustment - Payment to AE for availing administrative service - Assessee's failure to furnish evidence -TPO determined ALP of administrative service at nil – No substantial question of law 1372

The Hon'ble High Court dismissed Assessee appeal and observed that all the three authorities below have given concurrent findings of fact that the Assessee had failed to furnish evidence to demonstrate that administrative services were actually rendered by the Associated Enterprises ("AE") and the Assessee had received such services. The learned Transfer Pricing Officer had rightly determined Arm's Length Price of administrative service fee at nil. The Hon'ble High Court held that every Assessment Year ("AY") is a separate unit which is governed by its own peculiar facts. The Hon'ble Tribunal has clarified that its decision would not prejudice the Assessee's claim in any other AY, as it has to be decided based on the evidences produced to establish the claim of receipt of services from AE. The Hon'ble High Court placed reliance on the decision of *PCIT v. Make My Trip India Pvt Ltd (2017) 399 ITR 297 (Delhi HC)* held that difference of opinion be-tween the parties, as to the appropriateness of one or the other methods to calculate the arm's length price, cannot per se be a ground for interference and the appropriateness of the method unless shown to be contrary to the Income-tax Rules, 1962. (AY. 2008-09)

Akzo Nobel India Pvt. Ltd. v. Add. CIT [2022] 145 taxmann.com 468 / (2024)460 ITR 477 (Delhi)(HC)

S. 92C : Transfer pricing – Arm's length price - Avoidance of tax -International transaction - Comparable selection - Company engaged in marketing research and management activity functionally similar-Comparable to Assessee-Company rendering investment advisory services. [S. 260A] 1373

The Hon'ble High Court dismissed, the Revenue appeal noted that the Assessee-Company was engaged in rendering investment advisory services. The Company selected as comparable was engaged in market research and management activity. The Hon'ble High Court held that the said company should be included as comparable after relying on rulings of this court and other judicial precedence wherein the said company was found to be comparable to investment advisory service provider. (AY. 2009-10)

PCIT v. Warburg Pincus India (P.) Ltd (2024) 296 Taxman 161 (Bom)(HC)

1374 **S. 92C : Transfer pricing - Adjustment - Prices charged to Associated Enterprises was less than that charged to unrelated parties-Contrary to legal provisions-Tribunal order affirmed – Transfer Pricing adjustment deleted [S. 92, 260A]**

The Hon'ble High Court observed that as per the provisions of section 92C of the Act, the ALP cannot be determined by comparing prices charged to group companies, i.e., controlled transaction. The learned TPO ought to have arrived at ALP of Assessee's sale to its Associated Enterprises by only comparing it with an uncontrolled transaction of sale and therefore, the approach of the learned TPO was contrary to provisions of the law. The Hon'ble High Court affirmed the order of the Hon'ble Tribunal which held that the comparison has to be region/country specific, which the learned TPO has completely ignored. (AY. 2004-05)

PCIT v. Audco India Ltd (2019) 264 Taxman 237 / (2024) 461 ITR 152 (Bom)(HC)

Editorial : SLP of revenue dismissed, PCIT v. L & T Valves Ltd. [2023] 295 Taxman 585 (2024) 461 ITR 157 (SC)

1375 **S. 92C : Transfer pricing – Arm's length price - Avoidance of tax -International transaction - Advance Pricing Agreement - Basis for benchmarking-Tribunal directed TPO to consider FAR of the year under consideration with FAR of the years in Advance Pricing Agreement- Tribunal order affirmed. [S. 92CA, 260A]**

The Assessee had entered into Advance Pricing Agreement ("APA") with CBDT on 6 August 2019 covering transactions related to various Assessment Years ("AY") (2013-14 to 2021-22). For particular AY 2012-13, eighteen transactions were covered under APA. Out of the eighteen transactions, it was agreed that sixteen transactions will be benchmarked by using the other method while the remaining two transactions will be benchmarked by using Transaction Net Margin Method ("TNMM") and Resale Price Method ("RPM"). In the set aside proceedings under the order of the Hon'ble High Court, the Hon'ble Tribunal directed the learned TPO to consider the Function, Asset and Risk ("FAR") of the year under consideration with FAR of the years in APA. The Revenue sought to challenge this direction on the ground that so far as particular AY 2012-13 was concerned, the APA could not have been used as the basis for benchmarking. The Assessee defended the order of the Hon'ble Tribunal on the ground that the Hon'ble Tribunal keeping in mind the principles captured in the APA, passed order with the caveat put in place that the learned TPO needs to verify as to whether the FAR is the same. The Hon'ble Tribunal, placed reliance on a series of decisions, held that even if the year under dispute is not covered by APA, if the FAR is same, APA should be adopted for international transactions for the year under dispute. The Hon'ble High Court upheld the order passed by the Hon'ble Tribunal as it was passed after taking into consideration several judgments on the issue and held that no error has been committed by the Tribunal concerning either in the application of law or on facts. (AY. 2012-13)

PCIT v. Springer India (P.) Ltd (2023) 151 taxmann.com 251 /(2024) 461 ITR 61 (Delhi) (HC)

S. 92C : Transfer pricing – Arm's length price - Avoidance of tax -International transaction - Comparables - functional similarity - Software consultancy/development services – TPO conducted fresh TP analysis made addition – No reason for functional dissimilarity provided by Assessee - No error in reasons given by TPO/DRP for inclusion of comparables -PLR-Interest on outstanding receivable-TPO directed to adopt appropriate rate of interest by considering the currency in which loan was to be repaid. [S. 92B] 1376

The Hon'ble Tribunal held that in absence of any valid reason for exclusion of comparable, it should be treated that the assessee has taken 'U' turn, since the Assessee in its TP study has included L&T Infotech Ltd and Persistent Systems Ltd in the final list of comparables, further, the assessee has not provided any reason as to how the said company is functionally dissimilar with the assessee. Therefore, there is no error in the reasons given by the TPO to include the above company in the list of final comparables. With regard to the interest on outstanding receivable, the Hon'ble Tribunal directed the learned TPO to adopt appropriate rate of interest by considering the currency in which the outstanding receivable is denominated by the Assessee Company and its Associated Enterprises. (AY. 2012-13)

Oakton Global Technology Services Centre (India) (P) Ltd. v. ITO (2024) 230 TTJ 495 / 240 DTR 158 / 163 taxmann.com 769 (Hyd) (Trib)

S. 92C : Transfer pricing – Arm's length price - Avoidance of tax -International transaction - Corporate Guarantee – International Transaction – ALP at 0. 5% on amount guaranteed – Proper com-mission – Interest on outstanding receivables from AE - International transaction -Requires separate benchmarking - Credit period extended to non-AEs shall be extended to AEs Arm's length interest rate on similar foreign currency receivables/advances taken as LI-BOR+200 points- Accepted for determining ALP of notional interest on delayed recovery. [S. 92B] 1377

The Hon'ble Tribunal following the decision of Hon'ble Madras High Court in case of Redington (India) Ltd. (430 ITR 298) held that corporate guarantee is an international transaction requiring benchmarking. Further, following the decision of coordinate bench of Hon'ble Tribunal in case of Aurobindo Pharma Ltd (152 taxmann.com 469), directed the learned TPO to adopt the ALP of corporate guarantee at 0.5% on the guaranteed amount. Further, for the issue of interest on outstanding receivable the Hon'ble Tribunal observed that interest on outstanding receivables due from Associated Enterprises ("AE") is an international transaction requiring separate bench-marking. The loan attributable to the AE is deemed to have been consumed in a country outside India. The Hon'ble Tribunal directed the learned AO/TPO to accept the arm's length interest rate on similar foreign currency receivables/advances as LIBOR+200 points to be accepted for determining ALP of notional interest on delayed recovery. (AY. 2017-18)

Aurobindo Pharma Ltd v. ACIT (2024) 231 TTJ 81(UO) (Hyd)(Trib)

1378 **S. 92C : Transfer pricing -Adjustment-Reimbursement of third party costs for marketing and research-Expenses incurred for buying of advertisement space in the newspaper-Pass through entities- Cost for other items should be marked-up considering as part of cost base of Assessee-Tribunal affirmed order of CIT(A).**

The Hon'ble Tribunal upheld the order of the Hon'ble CIT(A) and held that expenses on advertisement and publicity, business promotion and participation in trade events at the request of the overseas Associated Enterprises which are reimbursed, should be treated as pass through cost and all other items of expenses are to be considered as part of the cost base of the as-sessee and should be marked-up. (AY. 2004-05)

ACIT v. BBC World (India) (P) Lt. (2023) 156 taxmann.com 386 / (2024) 229 TTJ 601 / 237 DTR 201 (Delhi)(Trib)

1379 **S. 92C : Transfer pricing-Arm's length price-Avoidance of tax-International transaction-Allocation of common expenses- TPO allocated expenses on basis of revenues from two segments -TP adjustment for payment of customs duty-Since difference was only in respect of amount and not rate of duty – No adjustment is allowable -Huge difference in quantities of products sold by assessee to its AE and non-AEs – TNMM as most appropriate method-TNMM applied for sale of finished goods.**

The Hon'ble Tribunal observed that the Assessee is engaged in manufacturing and trading of colour concentrates and additive masterbatches and that the Assessee has not shown any rational basis of allocation of common expenses between both segments on the basis of gross profit and therefore, the order of the learned TPO on allocation of common expenses on the basis of revenues from the two segments is proper. Further, the Hon'ble Tribunal held that the adjustment will be warranted only if there is a difference between the rate of custom duty paid by the assessee and comparables therefore, in the above case no adjustment is allowable on account of the custom duty as there is no difference in the rate of custom duty paid by the assessee and the comparable companies.

The Hon'ble Tribunal held that the Comparable Uncontrolled Price method is not the most appropriate method for benchmarking the international trans-action of 'Sale of finished goods in cases where there is difference in product, geography, timing or quantity sold etc. Since, in the instant case there is a huge difference in quantities of products sold by the assessee to its AE and non-AEs, CUP is not the most appropriate method. The Hon'ble Tribunal dismissed Revenue appeal and upheld the view of the Hon'ble CIT(A) who was justified in accepting the Assessee's contention that the Transactional Net Margin Method should be applied in respect of international transaction of sale of finished goods. (AY. 2014-15)

Ampacet Speciality Products (P) Ltd. v. Dy. CIT (2023) 155 taxmann.com 448 / (2024) 227 TTJ 112 / 233 DTR 31 (Pune)(Trib)

1380 **S. 92C: Transfer pricing – Arm's length price - Avoidance of tax -International transaction - Foreign exchange gains-Treated as item of operating revenue-Benchmarking analysis and selection of com-parables – Non-speaking order of CIT(A).**

The foreign exchange gain accrued to the Assessee arsing out of the business transactions was operating in nature. It was to be considered in determining operating margin and was treated as an item of operating revenue. The Hon'ble CIT(A) dismissed

several of the assessee's grounds regarding benchmarking, comparables selection, economic adjustments, and pricing arrangements, considering them as merely academic. The Tribunal found that the Hon'ble CIT(A) did not engage with the TPO's findings or is-sue a speaking order on the benchmarking analysis. As these were material issues requiring adjudication, the matter was remanded back. (AY. 2015-16)
Dy. CIT v. MSC Software Corporation India P. Ltd. (2023) 146 taxmann.com 273/(2024)116 ITR 684 (Pune)(Trib)

S. 92C : Transfer pricing – License fee for time and billing software – ALP determined at NIL without prescribed method – Adjustment deleted- IT cost allocation – Cost-to-cost recharge – ALP deter-mined at NIL without prescribed method – Adjustment deleted. 1381
Tribunal held that where the assessee had benchmarked the payment of license fees to its AE using the CUP method, supported by an expert valuation report and comparable royalty data, the TPO erred in determining the ALP at NIL without following any of the prescribed methods under section 92C r. w. Rule 10B. Following the Bombay High Court and earlier Tribunal rulings in assessee's own case, the adjustment was deleted. Tribunal held that payment made by the assessee to its AE towards global IT services, allocated on a cost-to-cost basis, was benchmarked using CUP and support-ed by agreements and third-party invoices. The TPO determined the ALP as NIL without applying any prescribed method, which was contrary to law. Relying on earlier years' decisions and jurisdictional precedents, the Tribunal deleted the adjustment. (AY. 2010–11)
Boston Consulting Group (India) (P.) Ltd. v. Dy. CIT (2024) 115 ITR 634 / [2025] 170 taxmann.com 540 (Mum)(Trib.)

S. 92C : Transfer pricing – Arm's length price - Avoidance of tax -International transaction - Loans to overseas subsidiaries- Interest prevailing on country of residence applicable-Addition deleted. 1382
The Hon'ble Tribunal observed that the rate of interest on loans advanced by the Assessee to its Associated Enterprises must conform to the rate of interest prevailing in the Associated Enterprises' country of residence, wherein the loan was availed of. The Hon'ble Tribunal placed reliance on *CIT v. Cotton Naturals (I) P. Ltd (2015) 55 taxmann.com 523 (Delhi HC)* and held that domestic prime lending rate could not be applied in respect of loans advanced in foreign currency to the Associated Enterprises situated overseas. (AY. 2010-11)
ACIT v. Uniparts India Ltd(2023) 150 taxmann.com 142 / (2024)115 ITR 473 (Delhi)(Trib)
Editorial: The case is affirmed in [2024] 160 taxmann.com 92 (Delhi)(HC)

S. 92C: Transfer pricing – Arm's length price - Avoidance of tax -International transaction -Outstanding receivable-Factors responsible for delay analysed over last three or four Assessment Years to determine benefit accruing to debtors-Working capital adjustment-Matter remanded-Deduction at source - Form 26AS-Matter remanded. [S. 92B S, Form No, 26A] 1383
The notional interest in respect of outstanding receivable the learned Assessing Officer has to consider factors responsible for delay to be analysed over last three or four Assessment Years to determine benefit accruing to debtors. The Hon'ble Tribunal remanded the matter

to the learned Assessing Officer for re-examination of the working capital adjustment and deduction of tax at source for difference as per Form 26AS. (AY. 2018-19)
Nokia Solutions and Networks India P. Ltd. (as successor of Alcatel Lucent India Limited v. ACIT (2024)115 ITR 653 (Delhi)(Trib)

1384 **S. 92C : Transfer pricing – International transaction – Corporate guarantee to AE – Adjustment restricted to 0. 5%- Loan to AE out of borrowed funds – Interest undercharged – Results in profit shifting – BEPS principle invoked.**
Held that providing corporate guarantee to an AE is an international trans-action under Explanation to section 92B. However, following judicial precedents and industry practice, the TP adjustment was restricted to 0. 5% of the guaranteed amount, as opposed to the higher rate adopted by the TPO. Held that where a loan is advanced to an AE out of funds borrowed from banks, the assessee must recover at least the same rate of interest from its AE as it pays to the bank. Charging a lower rate results in shifting of profits outside India, and in such a case, BEPS (Base Erosion and Profit Shifting) principles apply. Undercharging interest constitutes an international transaction requiring ALP adjustment under section 92C. (AY. 2010–11)
Cadila Pharmaceuticals Ltd. v. ACIT (2024) 115 ITR 51 (SN)/164 taxmann.com 52 (Ahd) (Trib.)

1385 **S. 92C : Transfer pricing – Interest on advances to AEs – Quasi capital claim rejected – Adjustment justified – Matter remanded for rate determination- Corporate guarantee – International transaction – Adjustment restricted to 0. 8%.**
Held that the assessee advanced funds to overseas AEs without charging interest, claiming they were quasi capital. The Tribunal ruled that the nature of the advance must be examined at the time of making the loan, not retrospectively based on later equity conversion. As there was no evidence that the advances were intended as quasi capital when made, the TPO rightly treated them as loans. Commercial expediency or availability of interest-free funds are not valid defences against TP adjustment. Held that furnishing corporate guarantees to overseas AEs constitutes an international transaction under Explanation to section 92B. Since the assessee had voluntarily agreed to charge 0. 8% guarantee commission during the assessment, the Tribunal upheld the CIT(A)'s order restricting the TP adjustment to that rate. No further enhancement was warranted. (AYs. 2010–11 & 2011–12)
Intas Pharmaceuticals Ltd. v. ACIT (2024)114 ITR 434 (Ahd)(Trib)

1386 **S. 92C : Transfer pricing – Functional dissimilarity – Software product company not comparable to software development services provider- Turnover filter – Company with turnover over 10x of assessee to be excluded- Diversified revenue streams – Mixed service/product companies not comparable- Related Party Transactions (RPT) – Comparable failing RPT filter to be excluded.**
Held that a company engaged in development and sale of software products (Kals Information Systems Ltd.) cannot be compared with the assessee, which is engaged only in software development services. In the absence of segmental data and due to functional differences, the company was directed to be excluded from the list of comparables. Held that Infosys Ltd., having a turnover of ₹ 19,416 crore compared

to the assessee's ₹ 1,171 crore, fails the 10x turnover filter. Following Karnataka High Court ruling in Acusis Software India (P.) Ltd., such a high-scale company is not comparable to a mid-sized software service provider and must be excluded. Held that Bodhtree Consulting Ltd., having revenue from software services, products, and diversified business lines, cannot be compared with the assessee providing only software development services. Functional dissimilarity and absence of proper segmental reporting warranted its exclusion.
Held that Sonata Software Ltd. had RPTs exceeding the accepted threshold of 25% of total revenue, making it ineligible as a comparable. Applying the RPT filter and relying on Delhi Tribunal's decision in Fiserv India (P.) Ltd., the Tribunal directed exclusion of this company. (AY. 2009–10)
Virtusa Consulting Services P. Ltd. v. Dy. CIT (2024)114 ITR 386 (Chennai)(Trib)

S. 92C : Transfer pricing – Management and administrative services – ALP cannot be determined at nil without applying a prescribed method. 1387
Held that the assessee availed a bundle of services including management, finance, and administrative support from its AE and made payments under a formal agreement. The TPO determined the ALP of the finance and general administration service component at nil, treating them as stewardship services and alleging lack of evidence of receipt or business necessity. The Tribunal observed that the assessee had submitted agreements, debit notes, and emails substantiating service receipt, and that the TPO failed to apply any of the prescribed methods under section 92C to determine the ALP. Merely concluding that services were unnecessary or not evidenced and thus assigning a nil ALP, without methodical benchmarking, was held to be contrary to law. Further, similar payments had been accepted in earlier years. Accordingly, the TP adjustment was deleted. (AY. 2012–13)
Dy. CIT v. Avo Carbon India P. Ltd. (2024)114 ITR 94 (SN)(Chennai)(Trib)

S. 92C : Transfer pricing – Functional dissimilarity – Company manufacturing auto suspension springs not comparable to tubular product manufacturer- Import filter – Company using only indigenous raw materials rightly excluded- Functional dissimilarity – Company manufacturing diversified auto components not comparable- Import filter – No raw material import by selected company – Not comparable– RPT filter – Comparable having high related party transactions to be excluded- Intangible ownership – Mere presence of intangibles not sufficient for exclusion- Application of MAP rate to non-UK AEs – Requires similarity in FAR – Matter remanded. 1388
Held that a company engaged in manufacturing auto suspension springs and coil springs was functionally different from the assessee, which was en-gaged in manufacturing tubular products like brake and fuel line systems. Due to the difference in nature of the products and the manufacturing process, the selected company was not a valid comparable. Held that the selected company was manufacturing coil springs using only indigenous spring steel as raw material, while the assessee imported 50% of its raw materials. This material difference in sourcing affected the cost structure, justifying exclusion of such company by the TPO based on the import content filter. Held that a company engaged in manufacturing shock absorbers, struts, front forks, bimetal strips and bearings was not functionally comparable with the assessee, who was into tubular

product manufacturing. Owing to the difference in functions, assets and risks, such a company was not suitable for benchmarking purposes. Held that where the assessee imported 50% of its raw materials for manufacturing tubular products, a company manufacturing spring and spring leaves without importing any raw material was rightly excluded due to a significant difference in sourcing strategy and cost structures, applying the import filter. Held that the selected company had related party transactions (RPT) of 37.17%, exceeding the generally accepted RPT threshold of 25%. Such high RPT impacts pricing and independence of operations, and the company was rightly excluded from the set of comparables. Held that although the selected company owned certain intangibles, the TPO found that such intangibles were not of the nature that materially affected margins or gave the company a unique advantage. As the assessee failed to demonstrate any margin-distorting impact, the company was rightly retained in the list of comparables. Held that the 18% margin fixed under the MAP resolution for UK AEs cannot be automatically applied to non-UK AE transactions unless it is shown that price-influencing factors are similar. Since the assessee did not file a detailed FAR analysis comparing UK and non-UK transactions, the matter was remanded to the TPO for fresh consideration. (AY. 2007-08)
Bundy India Ltd. v. Dy. CIT (2024)113 ITR 505 (Ahd)(Trib)

1389 **S. 92C : Transfer pricing – Arm's length price - Avoidance of tax -International transaction - Most appropriate method.**
The Hon'ble Tribunal observed that since market quotes were available on corresponding dates and when corresponding data was not available on the date of contract entered between the Assessee and its Associated Enterprise, the "other method" had been rightly applied by the Assessee. The learned Transfer Pricing Officer has failed to analyse the transfer pricing documentation prepared by the Assessee. The Assessee had considered all the market quotations available while maintaining the transfer pricing report and considering the contemporaneous nature of documentation process as provided under the relevant provisions of the Act. The Hon'ble Tribunal deleted the Transfer Pricing addition and held that the documentation of arm's length price prepared by the Assessee by adopting quotations from various brokerage houses, associations and exchanges cannot be faulted. (AY. 2018-19)
Golden Agri Resources (India) P. Ltd. v. Asst. CIT (OSD) (2024)113 ITR 496 (Delhi)(Trib)

1390 **S. 92C : Transfer pricing – Arm's length price - Avoidance of tax -International transaction - Selection of comparables-Company functionally dissimilar- Excluded from final set of comparables.**
The Hon'ble Tribunal held that the company selected as comparable was functionally dissimilar from that of the Assessee-Company. The learned Assessing Officer and the learned Transfer Pricing Officer were to exclude the said company selected as comparable from the final set of comparables. The said company was excluded from the list of comparables while benchmarking of the information technology enabled services segment from the final list of comparables in the case of the Assessee, all other transfer pricing grounds raised in this appeal become academic. (AY. 2018-19)
Katerra Technology Services LLP v. ACIT (2024)113 ITR 576 (Pune)(Trib)

S. 92C : Transfer pricing – Arm's length price - Avoidance of tax -International transaction- Transfer Pricing adjustments- Advertisement, marketing and promotional expenses-Administrative and business promotion activities for products sold in India-International transaction – TPO accepted overall margins in trading segment including AMP expenses as operating cost – No separate adjustment for AMP expense-incorrect margin of comparable-working capital adjustment. [S. 92CA, 143(1)(a)] 1391

The Hon'ble Tribunal deleted the Transfer Pricing adjustment and held that no adjustment is warranted separately with respect to advertising, marketing, and promotional expenses where the learned Transfer Pricing Officer had already accepted the overall margin of the trading segment which included the advertisement, marketing and promotional expenses as part of the operating cost. for,. Further, on the issue of miscalculated margins of a comparable, the Hon'ble Tribunal remitted the matter to the file of learned Transfer Pricing Officer to consider the correct margins of the companies. Further, there was a difference between the working capital of the Appellant and comparable and therefore, the Hon'ble Tribunal directed the learned Assessing Officer/ Transfer Pricing Officer to re-compute the working capital adjustment taking into consideration the details submitted by the Assessee (AY. 2018-19)

Lenovo India P. Ltd. v Dy. CIT (2024) 113 ITR 560 / 148 taxmann.com 237 (Bang)(Trib)

S. 92C : Transfer pricing – Arm's length price - Avoidance of tax -International transaction - Corporate guarantee fees- charged at rate of 1 percent- justified-Optionally convertible loans to subsidiary without charging interest- Quasi-capital in nature – non-conversion of loans to equity - entitled to interest at commercial rate – arm's length-No transfer pricing adjustment on interest on loans warranted-Reimbursement of expenses-assessee's business interest in overseas jurisdiction -No adjustment. [S. 92CA] 1392

The Appellant had charged corporate guarantee fee of 1 per cent from all AEs, however, the learned Transfer Pricing Officer relying on the bench-marking of corporate guarantee in the earlier assessment year at 2.52 per cent as Arm's length price, proposed an adjustment. The learned DRP held that corporate guarantee should be charged at 1.5 per cent from AE (average of 2 percent and 3 per cent). Further, relying on the decision of Appellant in its own case for earlier assessment year, the Hon'ble Tribunal held that ALP of bank guarantee charged by assessee at 1 per cent was correct. Further, on the issue of Optionally convertible loans to subsidiary on which no interest had been charged, the Hon'ble Tribunal held that the convertible loans advanced to the assessee were in the nature of quasi-capital in the sense that, substantive reward or true consideration for such loan was not interest simplicator on the amount advanced, but was an opportunity to own the capital on certain favourable terms.

Further, the Appellant had made reimbursement for products wherein assessee was intellectual owner and played role of entrepreneur whereas associate entity was only a distributor. The learned Transfer Pricing Officer noted that in FAR analysis in TP report, assessee had been classified as contract manufacturer, and, accordingly, TPO held that AE could not be said to have incurred expenses on behalf of assessee-company. Since Assessee reasonably demonstrated through documents that expenses were incurred in respect of assessee's business interest in overseas jurisdiction, no adjustment could be made (AY. 2015-16)

Zydus Lifesciences Ltd. v. Dy. CIT (2024) 113 ITR 725 / 160 taxmann.com 37 (Ahd)(Trib)

1393 **S. 92C : Transfer pricing-Arm's length price - Avoidance of tax -International transaction - Interest on loan given to Associated Enterprise-Interest in terms of safe harbour rules acceptable-Arm's Length price adjustment is to be made accordingly. [S. 92B, 92CA, R. 10TD(2A)(5)]**

The Hon'ble Tribunal held that parent company's commitment to providing its subsidiary with the resources it needs to meet its financial obligations or to get credit. The format of the letter of comfort asked for by the bank was not available, its impact on the interest to be charged on the loan could not be estimated. The adjustment made to the interest rate by the learned Assessing Officer in treating the letter of comfort as a bank guarantee could not be upheld, the Assessee's alternative argument of treating the interest rates prescribed under the head "Safe Harbour Rules", that is, under Rule 10TD(2A)(5) of the Rules, which was 6 months LIBOR plus 400 bps, was acceptable. The learned Assessing Officer was directed to treat this rate as the arm's length price of the international transaction and make adjustment accordingly. The identical upfront fee of 1.25 percent of the bank loan was charged. Therefore, the letter of comfort called for a separate adjustment to the interest. The Arm's length price adjustment to be made accordingly. (AY. 2018-19)

Axis Bank Ltd. v. Asst. CIT (2024)112 ITR 28 / 161 taxmann.com 530(Ahd)(Trib)

1394 **S. 92C : Transfer pricing – Arm's length price - Avoidance of tax - International transaction - Commission on standby letter of credit-No cost is incurred-Transfer Pricing adjustment deleted.**

The Hon'ble Tribunal deleted the Transfer Pricing adjustment and held that no cost had been borne by the Assessee Company and in the absence of any rebuttal to the assertion that actual bank commission charges incurred had been fully recovered from the Associated Enterprise, there is no justification in the transfer pricing adjustment. (AY. 2017-18)

Bhartiya International Ltd. v. Dy. CIT (2024) 112 ITR 207/227 TTJ 897 / 158 taxmann.com 239 (Delhi)(Trib)

1395 **S. 92C : Transfer pricing – Arm's length price - Avoidance of tax -International transaction - Business process outsourcing and knowledge process outsourcing-Comparables-Functional dissimilarity – exceptional financial results due to mergers/demergers – abnormal growth – outsourcing of services to third party vendors Absence of segmental data-Turnover of company more than 14 times excluded from list of comparables-Ad hoc two percent for working capital adjustment-Matter remanded to transfer pricing officer to adopt reasonable percentage on actual basis based on available data.**

The Hon'ble Tribunal held that there is fine line of difference between business process outsourcing and knowledge process outsourcing. It is difficult to determine the involvement of human intelligence or skills in the set of process or activities. It is subjective and needs proper analysis of process of work. The activities carried on by the Assessee and the parent company were similar. It was difficult to evaluate how much skills or intelligence were applied in providing support services by the assessee. However, the Assessee had submitted the statement of work to substantiate the extent of support services provided by it. Eclerx was to be excluded from the final comparables list on the ground of functional dissimilarity and absence of segmental data. Further, Accentia technologies Ltd and TCS e-serve are to be excluded due to exceptional financial results and significant turnover difference respectively.. Further, the learned

Transfer Pricing Officer had adopted an ad hoc two percent for finalising the working capital adjustment without assigning any reasons for adopting the percentage. The Hon'ble Tribunal remanded the matter to the learned Transfer Pricing Officer to adopt a reasonable percentage on actual basis based on the data available on record. Further, for the issue of short grant of TDS credit, the learned Assessing Officer was to verify the records submitted by the Assessee on the merits as per law after providing reasonable opportunity of being heard. (AY. 2008-09 to 2012-13)
Crisil Ltd. v. Add. CIT (2024)112 ITR 56 / 159 (Mum)(Trib)

S. 92C : Transfer pricing – Arm's length price - Avoidance of tax -International transaction - Selection of comparables- Segmental data not available -Extraordinary event of amalgamation- company to be excluded from list of comparables- Further -Service tax refund or service tax written back as operating revenue- international transaction within tolerance limits. 144C(13)] 1396
The Hon'ble Tribunal held that companies selected as comparables whose segmental data is not available, having functional disparity with Assessee, undergoing extraordinary event of amalgamation are to be excluded from list of comparables. Further, the revenue is against the direction of DRP to reduce service tax refund from operating expenses. However, relying on the decision of *AMD India P. Ltd ITA No. 521/M/2015 ITA No. 1126/M/2015 CO 54/M/2015 13 vs. ITO, 114 taxmann.com 703 (Bang.) and Capstone Securities Analysis P. Ltd. v. DCIT 105 taxmann.com 62 (Pune)*, the Hon'ble Tribunal held that service tax refund is operating revenue and the assessee has also furnished a table indicating that even if service tax re-fund is ignored the variation between the ALP and value of international transaction is less than 5%, hence, the international transaction would be within tolerance limit. Thus, the service tax refund or service tax written back is operating revenue while computing profit level indicator. (AY. 2010-11)
Tech Mahindra Business Services Ltd. v. ACIT (2024)112 ITR 21 (SN)(Mum)(Trib)

S. 92C : Transfer pricing – Arm's length price - Avoidance of tax -International transaction - Resale price method- Most appropriate method-Comparable-Functionally comparable-Transfer Pricing adjustment deleted. 1397
The Hon'ble Tribunal dismissing the Revenue appeal and held that Resale Price Method is most appropriate method. The Hon'ble Tribunal also held that the Revenue could not show that those entities were functionally not comparable with the Assessee. The companies selected as comparables might have lower margins but those had to be included in the comparability analysis if they were functionally comparable with the Assessee. The Hon'ble Tribunal deleted the Transfer Pricing adjustment affirming the order of the Hon'ble CIT(A). (AY. 2012-13)
PCIT v. Best Seller Fashion India P. Ltd. (2024)110 ITR 76 (SN)(Mum)(Trib)

S. 92C : Transfer pricing – Arm's length price - Avoidance of tax -International transaction - Assessee company and TPO - erroneously considered comprabales engaged in Financial & Leasing services – should have considered comprables engaged in Marketing support services - Matter remanded. [R. 10B] 1398
The Assessee was engaged in the business of buying and selling foreign currency and traveller cheques and was also involved in marketing and distribution of credit cards

and personal loan products. The Assessee had rendered services for marketing of credit cards and personal loans to Indian branches of foreign entity. In the Transfer Pricing Study report both, the Assessee and the learned Transfer Pricing Officer committed error of considering comparable companies engaged in Financial & Leasing services (Hire purchase and leasing services, Investment services, other financial services and other consultancy services) to benchmark the subject international transaction instead of considering comparable companies engaged in providing Marketing support services. The Hon'ble Tribunal remanded the matter to the lower authorities relying on the order of the earlier years. (AY. 2005-06, 2006-07)

American Express Services India Ltd. v. Dy. CIT (2024) 111 ITR 348/ 159 taxmann.com 1378 (Delhi)(Trib.)

1399 **S. 92C : Transfer pricing – Arm's length price - Avoidance of tax -International transaction - Selection of comparables-Turnover filter-Companies having turnover exceeding two hundred crore rupees rejected- Further Persistent loss filter-Comparables making persistent losses - Matter remanded- Further Notional interest on overdue receivables-Transfer Pricing Officer to recompute adjustment only in respect of invoices overdue for more than ninety days at interest rate of six months, Libor plus three hundred and fifty basis points. [R. 10B]**

The Hon'ble Tribunal held that the Assessee's turnover was less than two hundred crore rupees. The companies which had turnover exceeding two hundred crore rupees. The companies having turnover more than two hundred crore rupees could not be considered as comparables even if they were otherwise comparable. The application of the turnover filter was justified on the basis of the classification of companies as per the report of Dun and Bradstreet. Those four comparables were to be excluded. That the three companies SB, AC and HC were not considered as comparables by the learned Transfer Pricing Officer as they were persistent loss-making companies. As per the functional results provided by the Assessee, SB had shown profits in one year, and AC and HC had shown profits continuously. The Assessee had not raised any specific objection before the lower authorities. The issue was thus remitted back to the learned Assessing Officer/Transfer Pricing Officer/Dispute Resolution Panel for fresh consideration for decision as per law. The Assessee was given liberty to file necessary documents to substantiate its case. That with respect to the transfer pricing adjustment on notional interest on outstanding trade receivables, the learned Transfer Pricing Officer had himself allowed a credit period of ninety days, and all invoices had been received within that period. The is-sue was remanded to the Transfer Pricing Officer to recompute the adjustment considering an interest rate being six months LIBOR plus three hundred and fifty basis points instead of the mark-up of four hundred and fifty basis points applied by the Transfer Pricing Officer. This adjustment was to be made only if the invoices raised by the Assessee were not collected within the credit period of ninety days. (AY. 2016-17)

Deliverhealth Solutions India P. Ltd. v. Asst. Officer (2024) 111 ITR 554 (Bang)(Trib)

S. 92C : Transfer pricing-Arm's length price-Avoidance of tax-International transaction-Selection of comparables-Persistent Loss FilterCompanies whose turnover in current year is more than Rs. 200 crores is to be excluded from list of comparables-Companies Lacking Segmental Information And Functionally Dissimilar with assessee cannot be taken as comparables-Interest on outstanding receivables-Rate of interest charged at Libor + 300 basis points considering credit period of 90 days. [S. 92B, 92CA] - Matter Remanded. 1400

While considering the comparable Companies, persistent Loss Filter should be applied. Also, Companies whose turnover in current year is more than Rs. 200 crores are to be excluded from the list of comparables. Companies Lacking Segmental Information And Functionally Dissimilar with assessee cannot be taken as comparables. Interest on outstanding receivables matter is remanded. As regards rate of interest charged at Libor + 300 basis points considering credit period of 90 days. (AY. 2018-19)

Etisalat Software Solutions P. Ltd. v. Dy. CIT (2024) 111 ITR 475 (Bang)(Trib)

S. 92C : Transfer pricing-Arm's length price-Avoidance of tax-International transaction-Share application money-Treated as loan and transfer pricing adjustment made imputing interest-Addition is deleted. 1401

Held, that the transfer pricing adjustment made by imputing interest on share application money had been deleted by the Tribunal in the assessee's own case in the assessment year 2016-17 on the ground that the amount was refunded before the allotment of preference shares, and the transaction of subscription of preference shares itself was not found to be bogus or sham. Since, the transfer pricing adjustment made in this year was a continuation of earlier year's action of the Transfer Pricing Officer and since the earlier year's transfer pricing adjustment had been deleted by the Tribunal, the Assessing Officer was directed to delete the transfer pricing adjustment. (AY. 2017-18, 2018-19)

Dy. CIT v. Reliance Industries Ltd. (2024)109 ITR 180 (Mum)(Trib)

S. 92C : Transfer pricing-Arm's length price-Avoidance of tax-International transaction-Interest on delayed receipts of sale proceeds-Benchmarking at Libor Plus 200 basis points Benchmarking is accepted-Management consultancy services, Technical services and business support services-Comparables-Nature of services provided by company not functionally comparable-Commissioner (Appeals) is justified in including company-Corporate guarantee given to its Associated enterprises for availing of loans from financial institutions-Splitting of differential interest in ratio 50 : 50 be-tween assessee and its associated enterprises-Order of CIT(A) is affirmed-Captive power plant eligible unit-Transfer of electricity generated to other undertakings-Internal comparable uncontrolled price-Order of Commissioner (Appeals) is a affirmed. [S. 80IA] 1402

Held, that the arm's length price of interest on outstanding receivables adopted by the assessee at LIBOR plus 200 basis points had been accepted by the Tribunal in the earlier years. No distinguishing feature was pointed out by the Revenue in these two years, to take a different view. Accordingly, the view taken by the Commissioner (Appeals) was held to be proper. Held that the Commissioner (Appeals) had given a categorical finding that ANJ was not functionally comparable. No material was brought to contradict finding of the Commissioner (Appeals). The Commissioner (Appeals) was justified in rejecting

this company. Held, that the Tribunal had been consistently upholding the yield spread approach and also splitting of differential interest in the ratio 50 : 50 between the assessee and its associated enterprises. Order of CIT(A) is affirmed. Held that since, the Tribunal consistently upheld the practice of adopting internal comparable uncontrolled price in respect of transaction of sale of power to non-eligible undertaking and since the Commissioner (Appeals) had followed the order passed by the Tribunal in the earlier years, which had been upheld by the High Court in one of the years, the order passed by the Commissioner (Appeals) on this issue was to be upheld. (AY. 2017-18, 2018-19)
Dy. CIT v. Reliance Industries Ltd. (2024)109 ITR 180 (Mum)(Trib)

1403 **S. 92C : Transfer pricing-Arm's length price-Avoidance of tax- International transaction-Advertisement, marketing and promotion expenses-Not an international transaction-Payment of royalty on import of goods-Presumptions-Adjustment is not justified-Information Technology support services-Export of raw material and finished goods-Comprable-Details of expenses with debit notes supporting invoices-Matter remanded to TPO-System up grade-Matter remanded-Distributing dividend to non-Resident shareholders-Matter remanded. [S. 92B]**
Tribunal held, that advertisement, marketing and promotion expenses did not constitute an international transaction. The arm's length price adjustment made in this respect was deleted. The Tribunal in the assessee's own case for the preceding two years had held in favour of the assessee. The payment of royalty on the import of goods by the assessee from its associated enterprises was governed by the licence agreement which was effective since the year 2005. There was no legal bar on the commercial terms arranged by the assessee in respect of payment of royalty of the net sales. The Special Valuation Branch of the Customs Department had given a categorical finding that royalty was not included in the invoice value of the goods imported by the assessee. While arriving at his conclusion, the Trans-fer Pricing Officer had nowhere recorded or referred to any material which could demonstrate that royalty payment by the assessee was embedded in the process of the imported goods. It was merely a presumption which could not be upheld looking to the facts of the case and corroborative material placed on record. The upward adjustment in respect of payment of royalty was thus, to be deleted. [As regards to Information Technology support services, export of raw material and finished goods, details of expenses with debit notes supporting invoices,system up grade. Distributing dividend to non-Resident shareholders is Matter remanded. (AY. 2012-13)]
Reckitt Benckiser (India) P. Ltd. v. Dy. CIT (2024)109 ITR 137 (Kol)(Trib)

1404 **S. 92C : Transfer pricing-Arm's length price-Avoidance of tax-International transaction-Captive power consumption-Supplying electricity to other units-Purchasing electricity from other distribution companies-Transfer Two methods available to determine market value-Option available to assessee to pick between two methods-Adjustment is not valid. [S. 80IA (8), 92BA, 92F]**
Held that the other units of the assessee bought electricity from third par-ties at the same price which was paid to the eligible businesses. The assessee was a captive service provider for generating electricity and to sup-ply and distribute to the manufacturing unit which otherwise would have bought electricity from the open market. The price to be seen was that which the manufacturing unit paid in the open market. Accordingly,

there was no infirmity in the contention of the assessee that the rate to be considered was the rate at which purchases were made from third parties. The safe harbour rules do not apply to clause (i) of the Explanation to section 80-IA of the Act. The rates at which power was available through the Indian Energy Exchange could not be applied as these rates were applicable to distribution companies and not to the consumers. The adjustment was deleted. (AY. 2019-20)
Tata Steel Ltd. v. Dy. CIT (2024)109 ITR 18 (Mum) (Trib)

S. 92C : Transfer pricing-Arm's length price-Avoidance of tax-International transaction-Most appropriate method-Royalty-The profit split method could not be applied-The transactional net margin method is held to be the most appropriate method. [R. 10B(1)(d)] 1405
Held that there was no basis for the conclusion that the technology in question was to be used by a start-up or that the assessee was a start-up. The technology in question was that of a foreign company and was being used by the assessee on a continuing basis. There was no basis for the conclusion that the useful economic life of the technology would only be five years. In any event, the passage of time could not be the basis to discard the transactional net margin method as the most appropriate method. Even going by rule 10B(1)(d) of the Income-tax Rules, 1962, there should be some contribution by each of the parties to a transaction for earning profits from the sale of goods or the provision of services. Then, the contribution of each of the parties would be identified and the profit would be split be-tween those parties. In the case of the assessee, the technology was given by the foreign company for which royalty was paid. The use of the technology in the manufacture and sale of the products contribute to the profits of the assessee. The foreign company had nothing to do with that. The first condition for application of the profit split method was thus not met. The profit split method would apply only in a case involving the transfer of unique intangibles or in multiple interrelated international transactions which cannot be valued separately for determining the arm's length price. It may have been true that the assessee aggregated payment of royalty with the transaction of manufacturing as it was closely linked and adopted the transactional net margin method but that did not mean that the transactions were so interrelated that they could not be evaluated separately for applying the profit split method. Further, the assessee did not make any unique contribution to the transaction. The profit split method could not be applied. The transactional net margin method was held to be the most appropriate method. (AY. 2018-19)
ACIT v. Reservation Data Maintenance [2024] 109 ITR 12(SN) (Delhi) (Trib)

S. 92C: Transfer pricing-Arm's length price-Avoidance of tax-International transaction-Specified domestic transaction-Comparables-Gujarat Fluorochemicals Limited-Inox Air Products Limited-Excluded-Purchase and subsequent sale of capital asset-Matter remanded. [S. 92CA] – Ditto cases of particular comparables should not be reported. 1406
Assessee was in a Project Engineering line of business, which executed turnkey contracts relating to industrial gases plants, a process gas solutions line of business, etc. The issue involved is selection of comparable for computation of ALP of international transaction of purchase of raw materials and sale of finished goods. The first comparable involved is Gujarat Fluorochemicals Limited (GFL). The Assessee submitted that in Assessee's own case, the DRP has excluded this concern on account of functional disparity in AYs

2012-13, 2013-14, 2014-15. Held, GFL is to be excluded from list of comparables. With respect to Inox Air Products Limited, the Assessee submitted that it is not specifically in the line of manufacturing gases but it also has a host of other activities. The TPO had not examined its segmental accounts and not worked out how much component of its revenue is from the same area of operation as the Assessee is engaged in. Further TPO failed to compute true operating profit margins as well as considering the adjustment for working capital before adopting true percentage of margin for compare. Therefore, matter remanded back to AO to re-examine the issue and exclude the two aforementioned comparables from the list of 12 comparables finalised by TPO. The second issue is with respect to transfer of fixed asset. The Assessee had purchased two second-hand nitrogen generating plants which were manufactured in UK and installed in China. One of these plants were sold by the Assessee to its AE in Indonesia. The Assessee furnished additional evidence to show that it had paid customs duty which was not considered and that the Assessee had actually incurred a loss on sale. The ITAT held that this is a specific instance of purchase and sale of a plant for which it is quite difficult to find a comparable. It is a specific item for whom very limited customers would be there. Therefore, this issue was also remitted for re-examination at the level of AO. Appeal allowed. (AY. 2011-12)
Linde India Ltd. v. Jt. CIT [2024] 109 ITR 6 (SN) (Kol) (Trib)

1407 **S. 92CA : Transfer pricing-Reference to Transfer Pricing Officer-Arm's Length price-No interest was paid to creditor or supplier nor any interest has been earned from unrelated party-Deletion of addition by the Tribunal is affirmed-SLP of Revenue is dismissed. [Art. 136]**
Held that the Tribunal had deleted the transfer pricing adjustment on ac-count of receivables holding that the assessee was a debt-free company and that no interest was paid to the creditor or supplier nor any interest had been earned from unrelated party. Being a 100 per cent. captive service provider, the revenue of the assessee was 100 per cent. from its associated enterprises. Order of Tribunal is affirmed. SLP of Revenue is dismissed. (AY. 2015-16)
PCIT v. Boeing India Pvt. Ltd. [2024] 297 Taxman 225 (SC).
Editorial : PCIT v. Boeing India Pvt. Ltd. (2023)457 ITR 84/146 taxmann.com 131 (Delhi)(HC)

1408 **S. 92CA : Transfer pricing-Reference to Transfer Pricing Officer-Arm's Length price-Avoidance of tax-Tribunal holding Transfer Pricing Officer not empowered to hold transaction sham-High Court affirmed-Special Leave Petition Dismissed-Question of law kept open. [S. 37(1), 92C, Art. 236]**
On appeal by the Revenue the High Court held that the Tribunal was not wrong in holding that the Transfer Pricing Officer was not empowered to hold the transaction a sham one. SLP of Revenue is dismissed, question of law is kept open.
CIT v. LGE and C-NCC (Joint Venture) (2024)461 ITR 266/ 297 Taxman 293 (SC)
Editorial : Refer, CIT v. LGE and C-NCC (Joint Venture) (2024)461 ITR 265 (T& AP) (HC), also refer, LG Polymers India P. Ltd (2012) 16 ITR 240 (Visakhapatnam) (Trib)

S. 92CA : Transfer pricing - Reference to Transfer Pricing Officer-Arm's Length price-Avoidance of tax-Parent company of subsidiary-Not controlling and determining quantity of production-Sales to associated enterprises under individual contracts-Not payment of royalty-Not profit-shifting mechanism even if royalty embedded in sale price-Contract manufacturer-Royalty payment by subsidiary to its parent company abroad-Comparable to those in open market-Transfer pricing adjustment of royalty is not justified-No substantial question of law. [S. 92C, 260A, R. 10A, 10E] 1409

Held, dismissing the appeal of the Revenue the Court held that sales to associated enterprises under individual contracts is not payment of royalty. Royalty payment by the assessee subsidiary to its parent company abroad is comparable to royalty paid on transactions in open market. Transfer pricing adjustment of royalty is not justified. No substantial question of law. (AY. 2008-09)

PCIT v. Samsung India Electronics Pvt. Ltd. (2024)467 ITR 197/ 164 taxmann.com 706 (Delhi)(HC)

S. 92CA : Transfer pricing- Reference to Transfer Pricing Officer-Arm's Length price-Avoidance of tax-TPO's order is binding on the AO-AO, without affording an opportunity of hearing to the assessee, proceeded to add an amount to the total income of the assessee, which addition was neither determined nor directed by the TPO, as the ALP of the international transaction related to the demerger of the business-Order is set aside. [S. 92CA(4), Art. 226] 1410

Allowing the petition the Court held that a bare perusal of S. 92CA would reveal that in order to compute the ALP of the international transactions, the AO 'may' refer the matter to the office of the TPO, with prior permission of the Principal CIT or CIT. Furthermore, the mandate of S. 92CA(4) would reflect that the AO shall calculate the total income of the assessee in conformity with the ALP determined by the TPO. In cases, where certain international transactions may have a bearing on the computation of total income, the AO ought to refer the matter to the TPO in order to determine the ALP of the international transactions and the AO, while computing the total income of the assessee, has to proceed in conformity with the ALP determined by the TPO. It is a settled position of law that if the legislative scheme prescribes an act to be done in a certain manner, it ought to be done in that manner, and that manner alone. The order passed by the AO without affording an opportunity of hearing to the assessee, proceeded to add an amount to the total income of the assessee, which addition was neither determined nor directed by the TPO, as the ALP of the international transaction related to the demerger of the business. Order is set aside. (AY. 2017-18)

Giesecke & Devrient India (P) Ltd. v. DCIT (2024) 339 CTR 346 /467 ITR 650 (Delhi)(HC)

S. 92CA : Transfer pricing-Reference to Transfer Pricing Officer-Arm's Length price-Avoidance of tax-Order passed without considering relevant statutory provisions as will as judgements of various High Courts-Matter remanded to back to TPO for reconsideration in accordance with law. [Art. 226] 1411

Against the order of TPPO the assessee filed a writ petition, and submitted that TPO committed an error in passing the TP order without considering or appreciating the relevant statutory provisions as well as judgments of various High Courts relied upon by assessee. Whether since the said judgments relied upon assessee were rendered prior

to impugned order, and TPO also did not take into account relevant statutory provisions before passing impugned order, it would be just and appropriate to remit matter back to the TPO for reconsideration afresh in accordance with law. (AY. 2020-21)
Wipro Enterprises (P.) Ltd v. Dy. CIT (2024) 298 Taxman 155 (Karn)(HC)

1412 **S. 92CA : Transfer pricing-Reference to Transfer Pricing Officer-Arm's Length price-Avoidance of tax-Tribunal holding Transfer Pricing Officer not empowered to hold transaction sham-High Court affirmed. [S. 37(1), 92C, 260A]**
Dismissing the appeal of the Revenue, High Court affirmed the order of the Tribunal, wherein the Tribunal held that Transfer Pricing Officer not empowered to hold transaction sham.
CIT v. LGE and C-NCC (Joint Venture) (2024)461 ITR 265 (T&P) HC)
Editorial : Refer LG Polymers India P. Ltd (2012) 16 ITR 240 (Visakhapatnam) (Trib), CIT v. LGE and C-NCC (Joint Venture) (2024)461 ITR 266/ 297 Taxman 293 (SC),SLP of Revenue dismissed. Question of law kept open.

1413 **S. 92CA : Transfer pricing - Reference to Transfer Pricing Officer-Arm's Length price-Avoidance of tax-Transfer pricing-Reference to TPO-No reference is made to TPO-Addition is deleted. [S. 92C]**
Held that the Assessing Officer does not have jurisdiction to propose any transfer pricing adjustment in case where he has not made any reference to TPO. Accordingly where Assessing Officer did not make any reference to TPO for transactions covered by Transfer Pricing Regulations and he simply incorporated suggestion and adjustment made by TPO in an earlier year in the assessment order, such addition is not in compliance with pro-visions contained in section 92CA and, same is set aside. (AY. 2008-09)
Himatsingka Seide Ltd. v. DCIT (2024) 206 ITD 371 (Kol) (Trib.)

1414 **S. 115A : Foreign companies-Tax- Royalty -Determination of tax in certain cases-New agreement was not an extension of the erst-while licence and Technical Assistance Agreement Tax rate is therefore 10. 56% under section 115A instead of 20 % under the India-Italy DTAA-No substantial question of law. [S. 9(1)(vi), 260A, Art. 12]**
Assessee is in the business of manufacture of motorized two wheelers and three and four-wheeled light goods transport vehicles. It received royalty income and technical fees for services rendered to its India AEs. It entered into two agreements with its AE. Assessing Officer after considering both agreements, concluded that second agreement was only an extension of first agreement and, therefore, tax rate applicable would be 20 per cent and not 10.56 per cent. Tribunal held that there was difference between the two agreements and also law as prevailing and old agreement provided that trademarks to be used by assessee were only restricted to Ape 501 and Ape 601, whereas, as per new agreement assessee had provided license to manufacture and sell vehicles under name of Ape, which encompassed all kinds of vehicle. Tribunal also held that territory which was covered under old agreement was different from territory that was covered under new agreement and thus, the second agreement was not an extension of the earlier agreement. Dismissing the appeal of the Revenue the Court held that as the new

agreement is not an extension of the licence and Technical Assistance agreement (old agreement) tax rate applicable to royalty paid under the new agreement, should be 10. 56% under section 115A instead of 20 % under the India-Italy DTAA.
CIT (IT) v. Piaggio & C. S. P. A (2024) 297 Taxman 9 (Bom)(HC)

S. 115BAA: Tax on income of certain domestic companies-Determination of tax in certain cases-Delay in filing Form 10-IC-Technical problem on portal-Form filed within extended time grant-ed by Income-Tax Authorities-Benefit of concessional rate of tax cannot be denied. [S. 115BAA(2), 139(1), Form No. 10-IC] 1415

Dismissing the appeal of the Revenue the Court held that from the findings recorded by the Tribunal, it could be noticed that the assessee while filing the return of income opted to be taxed under the provisions of section 115BBA of the Act. However, it could not upload form 10-IC on account of technical some problem on the Income-tax Business Application portal at the relevant time. During the relevant period, the time to file form 10-IC was extended up to June 30, 2022. The assessee filed the form before the Assessing Officer on June 29, 2022. A copy of the form was placed before the Commissioner (Appeals). This was the first year in which the assessee was to avail of such benefits. Since the assessee could not upload form 10-IC, on the portal on account of technical error, there being no fault of the assessee, it could not be deprived of the benefit particularly when this was the first year for availing of such benefits. (AY. 2020-21)
PCIT v. KGY Glass Industries (P.) Ltd. (2024) 296 Taxman 180/ 464 ITR 129/ 336 CTR 480 (Guj)(HC)

S. 115BAA: Tax on income of certain domestic companies-Determination of tax in certain cases-Delay in filing of Form 10-IC-Circular extending the time for filing of return-Eligible for concessional tax rate under section 115BAA. [S. 139(1), Form No. 10-IC] 1416

Assessee-company engaged in the manufacturing of flexible films, filed its income-tax return for assessment year 2021-22 on 30-12-2021, and opted for reduced taxation under section 115BAA. However, CPC calculated the tax liability without considering this provision, resulting in an additional tax demand. Commissioner (Appeals) dismissed appeal, citing assessee's failure to file Form 10-IC within stipulated deadline as per Circular No. 06/2022 dated 17-3-2022. On appeal it was contended that Circular No. 19/2023 issued by CBDT allowed for condonation of delay in filing Form No. 10-IC for AY 2021-22, and it had met all conditions specified in Circular, including timely filing of income-tax return, selection of taxation under section 115BAA, and electronic filing of Form No. 10-IC before deadline. Since assessee had fulfilled all conditions specified in said circular and had filed Form No. 10-IC within stipulated timelines, it would be eligible to claim concessional tax rate under section 115BAA. (AY. 2021-22)
Sunpack Barrier Films (P.) Ltd. v. ADIT (2024) 112 ITR 1/ 206 ITD 700 (Ahd) (Trib.)

1417 **S. 115BAA: Tax on income of certain domestic companies-Determination of tax in certain cases-Uploaded Form 10-IC electronically on 2-5-2021 i.e. before cut-off date mentioned in CBDT circular No. 6/2022, dated 17-3-2022, i.e. 30-6-2022-Entitled to benefit of section 115BAA(1) for purpose of computation of income. [S. 139(1), Form No 10-IC]**

Assessee, a domestic company, had filed its return of income on 5-2-2021 i.e. before last date of filling return under section 139(1). The AO denied the benefit of S. 115BAA of the Act. On appeal CIT(A) affirmed the order of the AO. On appeal the Tribunal held that since Form 10-IC was electronically uploaded by assessee on 2-5-2021 i.e. before cut-off date mentioned in CBDT circular No. 6/2022, dated 17-3-2022, i.e. 30-6-2022, assessee is entitled to benefit of section 115BAA(1) for purpose of computation of income at rate mentioned. (AY. 2020-21)

Madison Communications (P.) Ltd. v. ACIT (2024) 206 ITD 774 (Mum) (Trib.)

1418 **S. 115BAC: Tax on income of individuals and Hindu Undivided Family-Old scheme-New tax scheme and filed form 10-IE while filing revised return, requirement of filing Form 10-IE was directory in nature and not mandatory and it was sufficient compliance if said form was before Assessing Officer at time of assessment. [S. 139(1), 143(1) R. 21AG(1), Form No 10-IE]**

Assessee-individual filed return claiming deduction under Chapter VI-A under the old scheme. Subsequently, assessee filed revised return, wherein assessee opted for new scheme of taxation under section 115BAC and also submitted Form 10-IE on date of filing revised return. Assessing Officer completed assessment under section 143(1) without allowing benefit of tax rate prescribed under new scheme of taxation on ground that Form 10-IE had not been filed within the time allowed under section 139(1). CIT(A) affirmed the order of the AO. On appeal the Tribunal held that since requirement of filing Form 10-IE was directory in nature and not mandatory and it was sufficient compliance if said form was before Assessing Officer at time of assessment, Assessing Officer was to be directed to take into consideration Form 10-IE filed by assessee. (AY. 2021-22)

Harbans Singh v. AO, CPC (2024) 208 ITD 151/2025) 233 TTJ 486 (Amritsar) (Trib.)

1419 **S. 115BBC : Anonymous donations-Determination of tax in certain cases-Charitable Trust-Anonymous donations received in the Hundi cannot be taxed under Section 115BBC(1) of the Act-Order of Tribunal is affirmed-No substantial question of law. [S. 10(23C)(v), 11, 12, 12A, 80G (5), 115BBC(2)(b), 260A]**

The Assessing Officer held that the assessee trust had received aggregate donations of Rs. 228.25 crores, out of which, Rs. 159.12 crores were by way of "hundi collections", which were 'anonymous donations'. The Assessing Officer held that the assessee being a charitable trust, and as the anonymous donations exceeded 5% of the total donations, the same were taxable under section 115BBC(1) of the Act. On appeal the CIT(A) deleted the addition. Tribunal also affirmed the order of the CIT(A). On appeal by the Revenue, the Court held that the provisions of Section 80G cannot be intermixed, with what is provided by Section 115BBC(2)(b) of the Act. Both the provisions stand compartmentalized and are independent of each other. It would be too far-fetched to reach to a conclusion that merely because the assessee was registered under Section 80G

of the Act, it cannot be a religious trust, so as to fall outside the purview of Section 115BBC (2)(b) of the Act. Such an approach would amount to an inappropriate reading of the provisions of Section 80G as also Section 115BBC(2)(b). The very foundation of the operation and effect of Section 115BBC(2)(b) is a conclusive ascertainment, and a factual determination of a trust being religious and charitable as ascertained from the contents of the trust deed. Once such requirement is satisfied, any anonymous donation received by such trust would be eligible / entitled to the benefit of an exemption from tax, by the applicability of sub-section 2(b) of Section 115BBC. On the other hand, Section 80G certainly lays down quantum test that is the amounts spent for its purposes to ascertain whether the charitable trust is eligible for registration or not, which is clear from the provisions of Section 80G (5B) of the Act. Honourable Court relied on the decision in *K. Ravindranathan Nair v. CIT (2001) 1 SCC 135* and affirmed the order of the Tribunal as there is no substantial question of law. (AY. 2015-16, 2016-17, 2018-19)
CIT (E) v. Shree Sai Baba Sansthan Trust-Shirdi (2024) 341 CTR 201/ 167 taxmann.com 304 (Bom)(HC)

S 115BBC : Anonymous donations-Determination of tax in certain cases-Charitable and religious purpose-Trust registered under S. 80G can also avail benefit of S. 115BBC(2)(b)-Entitle to benefit. [S. 80G, 115BBC(2)(b)] 1420

Tribunal held that reading of the provisions of S. 115BBC along with the Circular No. 14 of 2006, dt. 28th Dec., 2006 explaining its provisions re-veals that S. 115BBC was intended to check inflow of unaccounted monies into the institutions such as universities, educational institutions, medical institutions, etc. and it required that all such institutions ought to maintain complete details and records of the donors. Anonymous donations received by trusts, which exist solely for religious purposes or both religious and charitable purposes, are not to be taxed under S. 115BBC. The intent of the legislature is clear that such anonymous donations received in Hun-dis/donation boxes, etc. by at the aforesaid trusts/institutions from their devotees are not to be taxed under s. 115BBC. (AY. 2015-16)
Dy. CIT v (E) v. Shree Sai Baba Sansthan Trust (Shridi) (2023) 37 NYPTTJ 1500 /(2024) 227 TTJ 633 / 234 DTR 82 / 162 taxmann.com 575 (Mum)(Trib)

S. 115BBE: Tax on specified income-Determination of tax in certain cases-Reassessment-Limitation-Alternative remedy-Act provides complete machinery for assessment/reassessment of tax and the assessee is not permitted to abandon that machinery to invoke jurisdiction of the High Court under Art. 226 of the Constitution-S. 115BBE cannot be held unconstitutional on the ground that there an apprehension of misuse of the said provision. [S. 68, 148, 148A, 149, Art. 14, 226] 1421

Writ petition was filed to quash the notice issued under section 148 on the ground that S. 115BBE is unconstitutional. Dismissing the petition the Court held that it is settled law that statutory Acts and their provisions are not to be declared unconstitutional on the fanciful theory that power would be exercised in an unrealistic fashion or in a vacuum or on the ground that there is an apprehension of misuse of statutory provision or possibility of abuse of power. It must be presumed, unless the contrary is proved, that administration and application of a particular law would be done "not with an evil eye and unequal hand". Consequently, at this stage, S. 115BBE cannot be held unconstitutional on the

ground that there is an apprehension of misuse of the said provision. Further, it is settled law that the Act provides a complete machinery for assessment/reassessment of tax and the assessee is not permitted to abandon that machinery to invoke jurisdiction of the High Court under Art. 226 of the Constitution. Consequently, the writ petitions and pending applications were dismissed. (AY. 2015-16, 2017-18)
Triveni Enterprises Ltd. v. ITO (2024) 336 CTR 348 (Delhi)HC)

1422 **S. 115BBE : Tax on specified income-Determination of tax in certain cases-Unaccounted stock declared during survey-Excess stock being part of total business stock-Cannot be assessed as deemed income [S. 69, 69B]**
Alleged excess stock was not kept separately at any other place and was part of the total business stock found at assessee's business premises and thus alleged investment in excess stock was part of the business income and, therefore, could not be treated as deemed income under section 69 or 69B liable for taxation under section 115BBE. [AY 2019-20] [ITA No. 219/IND/2022 dated 19/12/2023]
ACIT (Central) Ujjain v. Italian Edibles Pvt. Ltd (Indore)(Trib)(UR)

1423 **S. 115JB : Company-Book profit-where disallowance under substantive provision i. e. section 14A had been deleted by Tribunal and this was affirmed by High Court the question of making consequential adjustment to the "book profit" does not arise - SLP of Revenue is dismissed. [S. 14A, 260A, R. 8D, Art. 136]**
High Court held that where disallowance under substantive provision i.e. section 14A had been deleted, question of consequential adjustments in book profit under section 115JB did not arise. SLP of Revenue is dismissed filed against impugned order of High Court was to be dismissed. (AY. 2011-12)
PCIT, Central v. Shapoorji Pallonji and Co. Ltd. (2024) 300 Taxman 182 (SC)
Editorial : Refer, PCIT, Central v. Shapoorji Pallonji and Co. Ltd. (2024) 164 taxman.com 707 (Bom)(HC)

1424 **S. 115JB : Company-Book profit-Disallowance under substantive provision i. e. section 14A had been deleted-No adjustment can be made to book profit. [S. 14A, 260A, R. 8D]**
Dismissing the appeal of the Revenue the Court held where disallowance under substantive provision i.e. section 14A had been deleted, question of consequential adjustments in book profit under section 115JB did not arise. (AY. 2011-12)
PCIT, Central v. Shapoorji Pallonji and Co. Ltd. (2024) 164 taxman.com 707 (Bom)(HC)
Editorial : SLP of Revenue against this order is dismissed. Refer, PCIT, Central v. Shapoorji Pallonji and Co. Ltd. (2024) 300 Taxman 182 (SC)

1425 **S. 115JB : Company-Book profit-Disallowance made under section 14A could not be considered for computing MAT. [S. 14A, R. 8D]**
Held that scheme of section 115JB, particularly in relation to clause (f) of explanation 1 therein, does not envisage any addition of disallowance computed under section 14A to calculate MAT as per section 115JB, therefore disallowance made under section 14A could not be considered for computing MAT. (AY. 2011-12)
PCIT v. Moon Star Securities Trading & Finance Co. (P.) Ltd. (2024) 299 Taxman 53/ 469 ITR 15 (Delhi)(HC)

S. 115JB : Company-Book profit-Amount transferred to statutory reserve fund is includible. 1426

Held that section 115JB states that for computing the book profits, the amount set apart for meeting liabilities other than ascertained liabilities, has to be added. The statutory reserve fund based on the Reserve Bank of India guidelines, was not based on any ascertained liabilities and hence, the sum debited to the profit and loss account to create the reserve in question had to be added for arriving at the 'book profits' under section 115JB. (AY. 2003-04 to 2014-15)

Shriram Transport Finance Co. Ltd. v. ITO (OSD) (2024)460 ITR 66 (Mad)(HC)

S. 115JB : Company-Book profit-The provision of S. 115JB is not applicable to Banking companies. [The Banking Companies (Acquisition and Transfer of Undertakings) Act, 1970, S. 11, Companies Act, 2013, S. 3, 129] 1427

Assessee-bank is neither formed nor registered under the Companies Act, 1956, nor it is an existing company as per the definition given in s. 3(1)(ii). Once it is not a company under the Companies Act, then the first condition referred to in cl. (b) of s. 115JB(2) is not fulfilled, and consequently, second proviso below s. 129(1) of the Companies Act is also not applicable. Deeming fiction in s. 11 of Banking Companies (Acquisition and Transfer of Undertakings) Act, 1970 is created only for the purposes of the IT Act. Same would not ipso facto make such bank a 'company' for the purposes of the Companies Act, 2013, unless the conditions specified in s. 3 thereof are fulfilled. There is no provision to deem a nationalised bank to be a company for the purposes of s. 3 of the Companies Act, 1956. Fiction created by s. 11 of the Acquisition Act does not imply that the assessee-bank is a company for the purpose of the Companies Act to which cl. (b) of sub-s. (2) of s. 115JB is applicable. Second proviso to sub-s. (1) of s. 129 of the Companies Act has no application to the corresponding new bank as it is not a banking company for the purpose of the said provision. Expression "company" used in s. 115JB(2)(b) is to be inferred to be company under the Companies Act and not an entity which is deemed by a fiction to be a company for the purpose of the IT Act-Accordingly, cl. (b) to sub-s. (2) of s. 115JB inserted by Finance Act, 2012 w. e. f. 1st April, 2013 is not applicable to the banks constituted as 'corresponding new bank' in terms of the Banking Companies (Acquisition and Transfer of Undertakings) Act, 1970 and therefore, the provision of s. 115JB cannot be applied to such banks. (AY. 2015-16)

Union Bank of India v. Dy. CIT (2024) 231 TTJ 497 / 241 DTR 289 / (SB) (Mum)(Trib)
Central Bank of India v. Dy. CIT (2024) 231 TTJ 497 / 241 DTR 289 / (Mum)(Trib)

S. 115JB : Company-Book profit-Book profit under S. 115JB is to be computed without resorting to computation under S. 14A-Disallowance under S. 14A cannot exceed the exempt income. [S. 14A, R. 8D] 1428

Held that book profit under S 115JB is to be computed without resorting to computation under S. 14A r/w r. 8D. Disallowance under S. 14A cannot be in excess of exempt income earned by the assessee during the assessment year in question. (AY. 2009-10 to 2015-16)

Royal Twinkle Star Club (P) Ltd. v. DCIT (2023) 152 taxmann.com 374 / (2024) 228 TTJ 991 (Mum) (Trib)

1429 **S. 115JB : Company-Book profit-Subsidy in form of excise duty exemption for setting up new industry in Sikkim-Not liable to tax-Excluded from computation of book profits-Reduction of foreign fluctuation translation reserve, inadvertently added while computing book Profits in return to be allowed. [S. 4,115JB(6) Accounting Standard-11.]**

Held that subsidy in form of excise duty exemption for setting up new industry in Sikkim is not liable to tax is to be excluded from computation of book profits. Reduction of foreign fluctuation translation reserve, inadvertently added while computing book Profits in return to be allowed. (AY. 2009-10 to 2012-13, 2014-15)

IPCA Laboratories Ltd. v. Dy. CIT (2024)113 ITR 53 /230 TTJ 409 /161 taxmann.com 511 (Mum)(Trib)

1430 **S. 115JB : Company-Book profit –Lease equalisation reserve created on leases on buildings being used by assessee-Not to be added while computing book profits.**

Held that that the lease equalisation charges were not to be treated as adjustments needing to be added back while computing the book profits. The addition is deleted. (AY. 2014-15)

Xchanging Technology Services India P. Ltd. v. ACIT (2024)110 ITR 52 (SN)(Delhi)(Trib)

1431 **S. 115JB : Company-Book profit –Exempt income-Cannot be considered while computing book profit-Interest on income tax refund-No power to make adjustment other than of items enumerated in Explanation 1. [S. 14A, R. 8D]**

Held, that the amount of disallowance computed under section 14A-Cannot be considered while computing book profit. Interest on income tax refund-No power to make adjustment other than of items enumerated in Explanation 1. (AY. 2017-18, 2018-19)

Dy. CIT v. Reliance Industries Ltd. (2024)109 ITR 180 (Mum)(Trib)

1432 **S. 115JB : Company-Book profit –Exempt income-No addition can be made-Adjustment in respect of interest on perpetual debentures is set aside-Pendency of rectification application-Assessing Officer is directed to dispose of rectification application [S. 14A, 37(1), 154]**

Held that the addition under section 14A to the book profits under section 115JB of the Act was deleted. The issue with respect to the addition of interest on the perpetual debentures to the book profits under section 115JB of the Act was set aside to the file of the Assessing Officer. Held that the assessee having filed a rectification application, the Assessing Officer is directed to dispose of the application. (AY. 2019-20)

Tata Steel Ltd. v. Dy. CIT (2024)109 ITR 18 (Mum) (Trib)

1433 **S. 115-O : Domestic companies-Tax on distributed profits-Income-Deemed to accrue or arise in India-Dividend-DTAA does not get triggered when a domestic company pays DDT under section 115-O-Order of the AO rejecting the claim of refund of excess DDT is affirmed -DTAA-India-Italy [S. 9(1)(iv), Art. 11]**

The assessee filed its return of income and claimed refund of excess DDT paid on dividend distributed. The assessee claimed that as the DDT represents tax on dividend

income, the assessee should be granted the benefit of article 11 of the India-Italy Double Tax Avoidance Agreement (India-Italy DTAA) and that the Dividend Distribution Tax (DDT) on the dividend declared and paid by the assessee to Piaggio & C. S. p. A., Italy, being tax on dividend income should be paid at the rate prescribed in the India-Italy DTAA. Consequently, excess tax (DDT) paid by the assessee should be re-funded to it. The Assessing Officer rejected the claim of the assessee for refund of excess DDT. CIT(A) affirmed the order of the AO. On appeal the Tribunal held that the DDT is a charge oon profits of company and not a charge in the hands of the shareholder or tax paid on behalf of the share-holder by the domestic company. Therefore, DTAA does not get triggered at all when a domestic company pays DDT under section 115-O. However, wherever contracting states to a tax treaty intend to extend treaty protection to a domestic company paying dividend distribution tax, only then, that domestic company can claim benefit of DTAA. Following the special Bench in Dy. *CIT v. Total Oil India (P) Ltd (2023) 149 taxmann.com 332 (SB) (Mum)(Trib)* order of CIT(A) was affirmed. (AY. 2016-17)

Piaggio Vehicles (P.) Ltd. v. ACIT (2024) 208 ITD 299 (Pune) (Trib.)

S. 115QA: Tax on distributed income to share holders-Buy back of shares-Consideration for purchase of its own shares from its shareholders in accordance with scheme sanctioned by High Court-completed on 31-5-2016 i.e. prior to 1-6-2016-Capital reduction carried out by assessee would not be covered in definition of buy-back as per explanation (i) to section 115QA and tax on distributed income to shareholders was not payable by assessee-company. [S. 115QC, Companies Act, 1956, S. 77A, 100-104] 1434

Assessee-company paid consideration for purchase of its own shares from its shareholders in accordance with the scheme sanctioned by the High Court. The purchase had been completed on 31-5-2016. Assessing Officer held that said payment would attract provisions of section 115QA and, accordingly, levied tax under section 115QA and treated assessee as assessee-in-default under section 115QC. CIT(A) deleted the levy under section 115QA. On appeal the Tribunal held that since assessee had carried out capital reduction under provisions of sections 100-104 of Companies Act, 1956 and same had been completed on 31-5-2016, capital reduction carried out by assessee would not be covered in definition of buyback as per Explanation (i) to section 115QA and tax on distributed income to shareholders was not payable by assessee-company. Prior to 1-6-2016 if company purchases its own shares in accordance with provisions of section 77A of Companies Act, such domestic companies were required to pay tax under section 115QA and after 1-6-2016 if company purchases its own shares in accordance with any of provisions of any law relating to companies, buyback tax liability would arise in hands of company. (AY. 2017-18)

ACIT v. Meriton Infotech (P.) Ltd. (2024) 205 ITD 347 /114 ITR 406/ 227 TTJ 761 (Mum) (Trib.)

1435 **S. 115WB : Fringe benefits-Employer-Employee relationship-Advertisement and business promotion expenses-Conference and meeting expenses and gift articles-Accepting that expenses in-curred for benefit of Doctors-No employer and employee relation ship-Addition is deleted. [S. 115W(2)(d), 115WB(2)(o)]**

Held that the assessee had filed the details of expenses, vouchers, to substantiate its claim that the advertisement and business promotion expenses were recurring expenses incurred during the normal course of the business exclusively for the purpose of business. Further, the Assessing Officer in his remand report after examination and verification of these details on a text check basis stated that the expenses were incurred by field staff for giving various gifts, travel facilities, etc., to doctors for promoting the products of the assessee. Therefore, from the remand report, it was sufficiently evident that the Department had accepted that the expenses under the head key account manager and customer relation management were incurred for the benefit of the doctors. Since no material had been brought on record by the Department to show that the doctors were employees of the assessee, the addition made by the Assessing Officer under section 115WB(2)(d) and (o) of the Act is deleted. (AY. 2006-07)

Piramal Enterprises Ltd. v. Dy. CIT (2024)110 ITR 58 (SN)(Mum)(Trib)

1436 **S. 119 : Central Board of Direct Taxes-Circular-Delay in filing of return-Posted during Covid 19 and death in family-Delay of 80 days in filing of return is condoned. [S. 74, 119(2)(b) 139 Art. 226]**

Held that delay of 80 days in filing of return was due to death in family and Covid-19 hence delay is condoned and the Revenue is directed to accept the return as per law. (AY. 2020-21) (WP No. 2348 of 2024 dt. 8-10-2024)

Smita Dilip Ghule v. CBDT (2024) BCAJ-December-P. 51 (Bom)(HC)

1437 **S. 119 : Central Board of Direct Taxes-Circular-Defective return-Genuine hardship-Lock down period-Delay in filing application for rectification of error committed in return of income is condoned. [S. 44ADA, 119(2)(b), 139(5), 139(9), 154, Art. 226]**

Assessee submitted return of income under section 44ADA. CPC issued notice to him under section 139(9) and asked him to remove defects in his re-turn of income within 15 days. Assessee could not remove said defects within the stipulated time. An application was submitted by assessee on E Nivaran Portal of CPC and CPC asked him to file revised return. However, assessee once again pointed out to CPC that because of certain technical reasons revised return could not be uploaded on Portal. Assessee made an application before concerned authority and requested to condone delay in filing return of income. Application of assessee was rejected on the ground that the assessee had failed to show genuine hardship. On writ the Court held that the assessee had pointed out that lock down during period between March, 2020 to April, 2020 resulted in delay, such delay in filing application for rectification. High Court condoned the delay and directed the petitioner to file a revised return. (AY. 2019-20)

Vrushti Aulkumar Shah v. PCIT (2023) 152 taxmann.com 77 /(2024) 470 ITR 229 (Guj) (HC)

S. 119 : Central Board of Direct Taxes-Circular-Condonation of delay of 18 days in filing of return-Beyond control of assessee-CBDT's Circular No. 13/2023 dt. 26-07-2023-Delay in filing return of in-come is condoned. [S. 80AC(ii) 80P(2) (a)(i), 119(2)(b), 139(1), 143(1),143(3), Art. 226] 1438

The assessee society filed it's return of income for the Asstt. Year: 2018–19 on 10–11–2018 wherein the deduction u/s 80P was claimed. The return of income was processed u/s 143(1) vide intimation dtd. 02–07–2019 followed by the regular assessment u/s 143(3) r. w. s. 144B of the Act with denial of deduction u/s 80P of the Act. The AO denied the deduction u/s 80P for the delay of 18 days in filing the return of income before the due date u/s 139(1) of the Act. Aggrieved with the assessment order, the assessee society preferred an appeal before the CIT (Appeals). In the meantime, the CBDT issued the Circular No. 13/2023 dtd. 26–07–2023 authorizing CCsIT/DGsIT to condonation the delay in filing income tax returns by cooperative societies claiming deduction under section 80P for various assessment years starting from 2018–19. Accordingly, the assessee society filed an application on 19–10–2023 with the Chief CIT placing reliance upon the CBDT's Circular (supra). The Chief CIT passed the order dtd. 04–07–2024 rejecting the application for condonation of delay of 18 days. On Writ Petition, the Court observed and held that the assessee society has filed the re-turn of income delayed by 18 days and the delay occurred due to reasons beyond its control. The Court also referred the CBDT's Circular (supra) and held that the delay in filing the return of income was to be condoned and the order passed by the CCIT is liable to be quashed. Referred, *Sullia Taluk Womens Multi-Purpose Co-operative Society Ltd. v Dy. CIT (2024) 158 taxmann.com 177 (Karn)(HC)* (AY. 2018-19)

Kanyakaparameshwari Co-operative Society Ltd. v. CCIT (2024) 301 Taxman 193 (Karn) (HC)

S. 119: Central Board of Direct Taxes-Circulars-Condonation of delay in filing returns within due date-Delay on account of ill health of spouse of Chartered Accountant-Reasonable cause-Delay is condoned. [S. 119(2)(b), 139, Art. 226] 1439

The Hon'ble High Court held that PCIT is not justified in rejecting the application made under section 119(2)(b) of the Act for condoning the delay in filing the returns without appreciating that genuine human issues faced by the assessee. The non filing of returns within the stipulated time was due to ill health of spouse of the Chartered Accountant otherwise the assessee is diligent in filing the returns. Thus, there is a reasonable cause beyond the control of assessee. Delay condoned. (AY. 2021-22)

Jyotsna M. Mehta v. PCIT (2024) 301 Taxman 6 (Bom.)(HC)

S. 119: Central Board of Direct Taxes-Circulars-Condonation of delay-Delay of two days in filing the Return of income for Assessment Year 2021-22-Delay is condoned. [S. 115BAA, 139, Form No 10-IC, Art. 226] 1440

The Petitioner had made an application for condonation of delay on 13th August, 2022, for condoning the delay of two days in filing the Return of In-come for Assessment Year 2021-22 due to technical difficulties on Income-tax portal and an incident of fire at office of Chartered Accountant leading to stoppage of electricity supply to entire building. Despite repeated re-minders, the same had not been decided by the Assessing

Officer/Respondent. In support the Petitioner has also relied on to the Circular No. 19 of 2023 (F No. 173/32/2022-ITA-I) dated 23rd October, 2023 issued under Section 119, read with Section 115 BAA of the Income Tax Act, 1961 and Rule 21AE of the Income Tax Rules, 1962, in the present case, the delay is of two days in filing of the Return, however, since the Petitioner had filed its Form 10 IC on 22nd February, 2022, the Petitioner was entitled to the benefit of Clause 3 (iii) of the said Circular in condoning the delay for filing Form 10-IC. (AY. 2021-22)
Neumec Builders Pvt. Ltd. v. CBDT (2024) 301 Taxman 625 (Bom)(HC)

1441 **S. 119: Central Board of Direct Taxes-Circulars Condonation of delay-Charitable or religious trust-Delay in filing Form 9A due to change in procedure. [S. 11(6), 119(2), Form Noo. 9A, Art. 226]**
The assessee-trust filed its nil return of income along with Form 10B claiming exemption under section 11. The assessee filed Form 9A on 20-12-2019 on the Income Tax portal along with revised computation. It was noted that assessee adopted this course pursuant to CBDT Circular No. 30/2019, dated 17-12-2019, extending relief for condoning delay in filing such Form 9A, which included assessment year in question i. e. 2017-18. The jurisdictional Assessing Officer wrongly linked and mixed up such issue of belated filing of Form 9A with disallowance of the assessees claim of deduction towards depreciation and capital expenditure under section 11(1), made by the assessee in the assessment proceedings. The assessee during the assessment proceeding for assessment year 2017-18 uploaded a revised note on the Income-tax Portal along with revised computation of income rectifying the mistake in such computation, namely claim of depreciation on fixed assets under section 11(6); expenses towards capital expenditure was revised to certain amount along with deduction under section 11(1) 'Explanation 1' clause (2) of Rs. 57. 28 lakhs being interest income accrued but not received. Such note of revised computation of income duly furnished/uploaded by the assessee. Circular issued by way of delegated legislation empowered Commissioner of Income Tax to consider and condone applications for delay in filing Form 9A within time, on ground of sufficient cause. The powers and statutory discretion conferred on the commissioners to condone delay under section 119(2)(b) ought to be judiciously exercised so that undue hardship to the assessee is avoided. A contrary view would militate against the true meaning, purport and language of Sec-tion119(2)(b) of the Act which aims at mitigating hardships and ensuring substantial justice to genuine assessee who should not be non-suited purely on hyper technical ground and ipse dixit of the assessing officer. (AY. 2017-18)
Nav Chetna Charitable Trust v. CIT, [2024] 169 taxmann.com 543 (Bom) (HC)

1442 **S. 119 : Central Board of Direct Taxes-Circular-Charitable Institution-Failure to file Audit report with return of income-Up loading the audit report was. 2.5 years-Condonation must be given liberal interpretation-Commissioner has power to condone delay-The order rejecting the application is quashed and the delay is condoned-The Respondent is directed to pass an appropriate order in accordance with law. [S. 11, 12A, 119(2(b), Form No 10B, Art. 226]**
The Audit report was prepared in time, i.e. on September, 20, 2017. Due to technical reasons the said report was not uploaded and the same was up loaded on April 10, 2019

i. e. after a delay of 2.5 years but before passing of the assessment order on September 24, 2021. The CIT(E) rejected the application for condonation of delay. On writ allowing the petition the Court held that where for reasons beyond the control of the assessee some delay has occurred in filing the report, the ITO, for reasons to be recorded, has been authorised to condone the delay in furnishing the auditor's report and accept it at a belated stage. It has been clarified that the exemption available to the trust under section 11 may not be denied merely on account of delay in furnishing the auditor's report. The word shall occurring in section 12A cannot, under the circumstances, be read as a must making it mandatory for the trust to furnish the auditor's report along with the filing of the return. Section 119(2)(b) of the Income-tax Act, 1961 had been enacted with a specific purpose empowering the authorities concerned to condone the delay on the part of the assessee in furnishing or in submitting of the returns or an appropriate application within a reasonable period of time. The provision does not provide for any specific period of time within which the application for condonation of delay needs to be filed and has been enacted to ensure that genuine hardship which an assessee may face can be avoided by condoning the delay, if any, that has occurred and an appropriate application seeking for condonation of delay is filed. Accordingly the Court held that the order rejecting the application is quashed the delay is condoned and the Respondent is directed to pass an appropriate order in accordance with law. (AY. 2017-18)

Shilparamam Arts, Crafts and Cultural Society v. NFAC (2024)468 ITR 315 (Telangana) (HC)

S. 119 : Central Board of Direct Taxes-Voluntary filing of return-Waiver or reduction-Interest under sections 234A, 234B and 234C of the Act [S. 119(2)(a), 139, Form 15H, Art. 226] 1443

The assessee filed the returns voluntarily without detection. The assessee mad an application for waiver of interest levied under sections 234A, 234B and 234C of the Act. Commissioner rejected the application for waiver of interest. On writ the Court held that the word detection would have to be understood in terms of the provisions of the IT Act while in layman knowledge the detection would be coming to know of a particular aspect alone, but in terms of IT Act, the provisions of s. 142 and 148 would come into play i. e., where there is a evasion on the part of any assessee which comes to the knowledge of the AO and he initiates proceedings by issuing notice under s. 142(1) that it can be said that the AO has detected such an action of evasion of tax. It is also noticed and admitted position that till the date, assessee filed his returns and deposited the tax, no notice under s. 142 was issued nor any notice under s. 148 was issued as has been noticed in the impugned order also. In the present case interestingly, the AO came to know about the Form 15H and information mentioned therein which admittedly was signed by the assessee on dotted lines. Having come to know about such information and that the assessee had not filed his returns for several years and letters seem to have been sent by the AO to the assessee on 30th Jan., 2000. Upon receiving the same, the assessee has filed his returns on 3rd Feb., 2000 i. e., within a period of four days. He thereafter has also sent a letter and he has also deposited the tax. In view there-of, it cannot be said that the IT return was not filed voluntarily without detection

of the AO. Interests levied under section 234A, 234B and 234C is directed to be waived. (AY. 1990-91 to 1999-2000)
Baso Devi v. CBDT (2024) 338 CTR 105 / 161 taxmann.com 17 (P&H) (HC)

1444 **S. 119 : Central Board of Direct Taxes-Return-Condonation of delay-Filed after six years-Directed to accept the return and the assessee is directed to rectify the errors and the claim for refund should be processed in accordance with law. [S. 119(2)(b), 139, 240, Art. 226]**
Assessee's application for condoning the delay in filing the return of income for the asst. yrs. 2016-17 has been rejected on the ground that it was filed after the time period prescribed for condoning the delay of six years as per the Circular No. 9 of 2015, dt. 9th June, 2015. On writ the Court held that considering the fact that the assessee had raised his grievances as early as on 26th Feb., 2019 and also approached the Public Grievance Portal of the Prime Minister's Office and in pursuance to which the assessee was refund-ed Rs. 2,32,549 in respect of the two assessment years i. e., 2017-18 and 2018-19, the application dt. 31st May, 2023 should not be treated in isolation as it dates back to 26th Feb., 2019 when, the assessee raised her grievance for the first time. Thus, the application can be said to be on time, hence the order is set aside. Assessee should be permitted to rectify the returns of income for the AY.. 2016-17. Assessee should approach the assessing authority within a period of ten days from today and rectify the errors/defects in the returns. After the assessee rectifies the errors, his claim for refund should be processed in accordance with the law. (AY 2016-17)(SJ)
Umesh Shenoy v. PCIT (2024) 337 CTR 118 (Ker) (HC)

1445 **S. 119 : Central Board of Direct Taxes-Circular-Charitable purpose-Revised return of income-Delay-Condonation of delay-Genuine hardship-Bona fide reasons to be understood in context of circum-stances-Application for condonation of delay was allowed. [S. 2(15),11(1)),119(2(b), 139(5), Art. 226]**
Allowing the petition the Court held that the assessee having made out a case of genuine hardship in its favour, rejection of the application filed for condonation of the delay under section 119(2)(b) in filing the revised return of income under section 139(5) had no justification. The authority had neither in the rejection order under section 119(2)(b) nor in the counter affidavit, denied the entitlement of the assessee to claim set off of past years' deficit under section 11. Rather, the Commissioner (Appeals) in his order had acknowledged the entitlement of the assessee to such claim. The assessee had established the requirement of "genuine hardship", as enumerated under section 119(2)(b). Therefore, the finding of the Commissioner (Exemption) that the assessee had failed to demonstrate "genuine hard-ship", was misconceived, and unsustainable. The assessee had filed its re-turn for the assessment year 2021-22 on the due date of March 15, 2022. The time limit for filing the revised return of income under section 139(5) was December 31, 2022. On the observation of the Commissioner (Appeals) and finding no other alternative, the assessee had filed an application under section 119(2)(b). The assessee had clearly stated in its application filed under section 119(2)(b) that it had inadvertently erred in claiming the past years' deficit. Its claim was genuine and unless the time limit for filing revised return making such claim was extended, the assessee

would be in genuine hardship. The authority without taking into consideration the genuine hardship of the assessee had mechanically rejected the application which was unsustainable. That in view of the provisions of section 119(2)(b) read with the circular dated June 9, 2015 ([2015] 374 ITR (St.) 25) issued by the Central Board of Direct Taxes, which stipulated that an application for claim of refund or loss was to be made within six years from the end of the relevant assessment year for which such application or claim was made, the last date for filing of revised return for the assessment year 2021-22 was December 31, 2022 and the assessee had made the application under section 119(2)(b) on October 16, 2023 which was within six years time limit, as stipulated in the circular for condonation of delay in filing the revised return under section 139(5). When the assessee had filed the application indicating its genuine hardship, it should have been considered in the proper perspective and not rejected. Accordingly, the order rejecting the application for condonation of delay in filing the revised return under section 139(5) was quashed and set aside. The authority concerned is directed to take follow up action in accordance with law. (AY. 2021-22)

Oneness Educational and Charitable Trust v. CIT (E) (2024)466 ITR 654 / 338 CTR 733/161 taxmann.com 544 (Orissa)(HC)

S. 119 : Central Board of Direct Taxes-Circular-Delay in filing return-Condonation of delay-National Company Law Tribunal-Revised books of account-Genuine hardship-Power vested in Authority to be judicially exercised-The assessee could file before the jurisdictional Assessing Officer physical returns of income based on books of account revised under section 130(2) of the 2013 Act, as taken on record by the National Company Law Tribunal for the assessment years 2015-16 to 2020-21 within the time stipulated in this order. [S. 119(2)(b). 139(4), Companies Act, 2013, S. 130, Art. 226] 1446

Allowing the petition, the Court held that the reasons given by the Central Board of Direct Taxes for refusing permission were not sustainable. The National Company Law Tribunal, while ordering recast of accounts has kept the rights of the Government to continue with the proceedings pending be-fore the Serious Fraud Investigation Office, Enforcement Directorate and Central Bureau of Investigation. Unless the Income-tax Department permitted filing of the return of income based on the recast books of account, it would not be able to examine the veracity or the genuineness and correctness of the claim of the assessee nor be able to examine the complicity of the former key managerial personnel and their impact on the assessment as well as other proceedings. That only when the returns of income based on the books of account revised by the auditors appointed by the Ministry of Corporate Affairs were allowed to be filed and examined, could the assessment orders be passed under section 143(1) or 143(3) or reopening of the assessment under section 147 be considered. That when by the order under section 130(2) of the Companies Act, 2013 passed by the National Company Law Tribunal on an application filed by the Ministry of Corporate Affairs and the accounts had been recast and accepted by the National Company Law Tribunal and also filed with the Registrar of Companies under the Ministry of Corporate Affairs, the Department could not raise frivolous objections and hold that the delay in filing the returns of income based on the revised books of account should not be even be condoned. That the assessee could file before the jurisdictional Assessing Officer

physical returns of income based on books of account revised under section 130(2) of the 2013 Act, as taken on record by the National Company Law Tribunal for the assessment years 2015-16 to 2020-21 within the time stipulated in this order. The Assessing Officer was to make assessments in accordance with law considering the revised returns of income filed based on revised books of account for these assessment years. Hence, any assessment order passed under section 143(3) or 144C for any of these assessment years for which the revised returns of income had been filed were set aside. Consequential notices issued and orders passed, if any, were also set aside. That accepting the revised returns of income based on the revised books of account would not absolve the concerned other authorities from any action that should be taken on the basis of earlier books of account based on the on-going investigation. If after the investigation, these revised accounts were required to be recomputed, the assessee could not raise the issue of limitation for a period of three years from the date on which the assessment order was passed. The calculation of time for the period of limitation provided under section 149 would commence from the date the assessment orders were passed for each of the assessment years. The pending assessment proceedings for the assessment years 2021-22 and 2022-23 could not be proceeded with until the assessment orders were passed for the assessment years 2020-21 and 2021-22. (AY. 2015-16 to 2020-21)

CG Power and Industrial Solutions Ltd. v. ACIT (2024)465 ITR 432/162 taxmann.com 315 (Bom)(HC)

Editorial : SLP of Revenue against the said order has been dismissed. Re-fer ACIT. v. CG Power and Industrial Solutions Ltd (2025)472 ITR 642 (SC)

1447 **S. 119 : Central Board of Direct Taxes-Condonation of delay-Genuine hardship to be construed liberally-Delay in filing Form 10CCB-Special category States-Rectification of mistake-Duty of Assessing Officer-Application for rectification pending disposal for almost six years-Assessing Officer is duty bound to pass order expeditiously. [S. 80IC, 143(1), 154, 264, Art. 226]**

The Assessing Officer had denied the deduction under section 80IC in the intimation under section 143(1) without mentioning any reasons, the assessee filed an application under section 154 for rectification. Despite reminders the rectification application was not disposed of. Contending that since the audit report in form 10CCB was not filed due to the inadvertence of his chartered accountant which possibly could have been the reason for denial of deduction under section 80IC, and form 10CCB was uploaded, the assessee filed an application for revision under section 264 before the Principal Commissioner seeking grant of deduction under section 80IC. The petition was dismissed on the ground of limitation since it was filed after a period of two and half years. The assessee continued to pursue the pending rectification application. The assessee approached the Central Board of Direct Taxes for condoning the delay, and to direct the Assessing Officer to allow the rectification application. The Board rejected the application on the ground that the reasons stated by the assessee, i.e., inadvertence on the part of its chartered accountants in uploading form 10CCB was general and no reasonable cause was shown to justify the genuine hardship being faced by the assessee. On a writ petition held that no assessee would stand to benefit

by filing a delayed claim, more so, where the assessee would get a tax advantage or benefit by way of deduction under section 80-IC. The fact that an assessee had realized that he would pay more tax if he did not get the benefit of deduction under section 80-IC would be a "genuine hardship". The order passed by the Central Board of Direct Taxes under section 119 indicated its disregard for judicial orders. The order was quashed. The Court also held that the Assessing Officer was duty bound to pass an order on the application under section 154 which had been pending for almost six years, instead of making baseless statements that there was no mistake apparent from record for which rectification was sought. The Legislature has conferred power on the Principal Commissioner under the Income-tax Act, 1961 to enable the authorities to do substantive justice to the assessees to condone the delay for disposing of matters on the merits. Routinely passing orders without appreciating the reasons why the pro-visions for condonation of delay have been provided in the Act defeats the cause of justice. There cannot be a straitjacket formula to determine what is "genuine hardship". [Relied, *Bilawala (K. S.) v. PCIT (2024) 463 ITR 766 /158 taxmann.com 658 (Bom)(HC) R. K. Madhani Prakash Engineers J. V. v. UOI (2023) 458ITR 48 (Bom)(HC)* (AY. 2016-17)
Pankaj Kailash Agarwal v. ACIT (2024) 464 ITR 65 (Bom)(HC)

S. 119 : Central Board of Direct Taxes-Refund-Condonation of delay-Delay in filing of return-PCIT has no power to consider the merits of the refund application and what is required to be considered is the merits of the application for condonation of delay only-Matter is remitted back for reconsideration. [S. 119(2(b), 139, 237, 240, Art. 226] 1448

On writ allowing the petition the Court held that S. 119(2)(b) only empowers the Board to admit an application or claim for exemption, deduction, re-fund or any other relief under the Act, after the expiry of the period specified by or under the Act for making such application or claim and deal with the same on merits, in accordance with law. The Circular No. 9 of 2015, dt. 9th June, 2015, empowers the Principal Chief CIT/the Principal CIT to con-sider the merits of the refund claim while exercising the delegated power under S. 119(2)(b), which would amount to circumvent the provisions of the Act. The PCCIT or the PCIT has no power to consider the merits of the refund application and what is required to be considered is the merits of the application for condonation of delay only. The order is held to be unsustainable and is set aside. The matter is remitted back to the file of the Principal CIT to pass fresh orders on the application of the assessee for condonation of delay in filing the return. While considering the application for condonation of delay, the Principal CIT is not required to go into the merits of the claim of the assessee. Matter is remanded back for reconsideration. Followed, *Daisy v. PCIT (2024) 336 CTR 335 (Ker)(HC)* (AY. 2021-22)
Best Ready Mix Concrete v. PCIT (2024) 336 CTR 345(Ker) (HC)

1449 **S. 119 : Central Board of Direct Taxes-Instructions-Circular-Tax on income of new manufacturing domestic companies –Application for condonation of delay-Relied on report which is not made available to the petitioner-Order is not passed or signed by the Member who has given personal hearing-Principles of natural justice would re-quire that revenue should have made available a copy of report received by them from Field Authorities to assessee and given them an opportunity to explain or show cause-Matter remanded to Central Board of Direct Taxes with directions. [S. 115BAB, 119 (2)(b), Form No 10-ID, Art. 226]**

Assessee, a joint venture between Tata Autocomp and GOTION CHINA filed an application for condoning delay if any in filing Form 10ID to avail beneficial rate of 15% under section 115BAB. A personal hearing was conducted, and an order was passed rejecting application of assessee. Assessee challenged order on two grounds: first, it was not signed by Member who con-ducted personal hearing, and second, it relied on a Field Authorities' report that was not provided to assessee. Principles of natural justice would re-quire that revenue should have made available a copy of report received by them from Field Authorities to assessee and given them an opportunity to explain or show cause. On those two grounds alone, order was to be quashed and set aside. Matter remanded to Central Board of Direct Taxes with directions. (AY. 2022-23)

Tata Autocomp Gotion Green Energy Solutions (P.) Ltd. v. CBDT (2024) 299 Taxman 282 /464 ITR 61 / 340 CTR 942 (Bom.)(HC)

1450 **S. 119 : Central Board of Direct Taxes-Instructions –Return-Condonation of delay-Illness of accountant-Reasonable cause-Genuine hardship-Delay is condoned-Order of CBDT is set aside-Directed to file the return within 15 days. [S. 119(2)(b), 139 (1), 139(4), Art. 226]**

Assessee is an income tax payee and had been regularly filing its income tax returns for last 23 years. Assessee could not file its return of income under section 139(1) for assessment year 2022-23 for reason that accountant of assessee fell ill and subsequently on account of such illness had to resign due to which books of account could not be finalized which resulted in delayed filing of return. Assessee had sought for condonation of delay on ground of genuine hardship. CBDT refused to condone delay on ground that assessee had adopted a casual approach and took more than three months' time to find a suitable replacement for its accountant which constituted wilful negligence on part of assessee and same did not constitute genuine hardship. On writ allowing the petition the Court held that materials on record did not substantiate any wilful negligence on part of assessee. Delay did not appear to be on account of any negligence or mala fide of assessee as illness and subsequent resignation of accountant was an entirely unforeseen event which amounted to genuine hardship. Accordingly the delay is condoned. The Assessee is directed to file the return within 15 days. Circulars and Notifications : CBDT Circular No. 9/2015, dated 9-6-2015. (AY. 2022-23)

Anmol Feeds (P.) Ltd. v. UOI (2024) 299 Taxman 269/ (2025) 476 ITR 47 (Cal.)(HC)

S. 119 : Central Board of Direct Taxes-Compensation wrongly shown as taxable-Application for condonation of delay of revised return-Genuine hardship-Refusing to condone the delay can result in a meritorious matter being thrown out at the very threshold and cause of justice being defeated. As against this, when the delay is condoned, the highest that can happen is that a cause would be decided on merits after hearing the parties-Delay is condoned-Directed to decide on merits. [S. 119(2)(b), 143(1), Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013, Art. 226] 1451

Assessee received compensation under Right to Fair Compensation Act on compulsory acquisition of its land. Due to oversight, compensation was in-correctly included in total profit. Realizing later that no tax or stamp duty applied to award, assessee sought leave for a revised return. It filed an application for condonation of delay under section 119(2)(b) which came to be rejected on ground that no genuine hardship was shown by assessee. On writ allowing the petition the Court held that when an assessee feels he has paid more tax than what he was liable to pay will certainly cause hardship and that will be certainly a genuine hardship. Court also held that when assessee strongly felt that award that it received under Right to Fair Compensation Act need not have been offered to tax, concerned authority should have condoned delay and considered matter on merits. Accordingly the delay in filling the revised return is directed to be condoned and the Authority concerned is directed to decide on merits. (AY. 2022-23)

K. S. Bilawala v. PCIT (2024) 297 Taxman 464 /463 ITR 766 (Bom.)(HC)

S. 119 : Central Board of Direct Taxes-Charitable Trust-Delay in filing Form No 10B-Delay of 1257 days-Oversights by the Chartered Accountant-Human error lacking any malafide intention-Delay was not intentional or deliberate-Assessee could not be prejudiced on account of an ignorance or error committed by professional engaged by it-Delay is condoned. CIT(E) is directed to proceed with the re-turn in accordance with law. [S. 11, 119(2), Form No 10B, Art, 226] 1452

Assessee, a charitable trust filed its return for assessment year 2016-17 on 6-9-2016, declaring nil income and seeking a refund. Assessee failed to submit Form No. 10B along with return, which was eventually filed on 15-2-2020, with a delay of approximately 1257 days. Despite explaining delay as an oversight by their Chartered Accountant/Auditor, condonation application under section 119(2)(b) was rejected by CIT(E). On writ allowing the petition the Court held that since assessee had been filing its returns and Form 10B for subsequent years within due dates on this ground alone, delay condonation application should have been allowed because failure to file returns for AY 2016-17 could be only due to human error lacking any mala fide intention. On facts the delay was not intentional or deliberate and therefore, assessee could not be prejudiced on account of an ignorance or error committed by professional engaged by it. Delay is condoned. CIT(E) is directed to proceed with the return in accordance with law. Followed, *Sarvodaya Charitable Trust v. ITO (E) (2021) 278 Taxman 148 (Guj)(HC) Shree Jain Swetamber Murtipujak Tapagachha Sangh v. CIT (E) [2024] 161 taxmann.com 114 (Bom)(HC).* (AY. 2016-17)

Al Jamia Mohammediyah Education Society v. CIT (E) (2024) 298 Taxman 650 /339 CTR 572 (Bom.)(HC)

1453 **S. 119: Central Board of Direct Taxes-Instructions to subordinate authorities-Application for condonation of delay-Capital gains-Agricultural land-With in specified urban limits-PCIT had gone into the merits of the claim and the merits of the delay condonation application had not been taken-Matter remanded back. [S. 10(37), 119(2)(b), Art. 226]**

The assessee filed a 'Nil' return on behalf of her husband with an application for condonation of delay in terms of s. 119(2)(b). The Pr. CIT rejected the application because the assessee had not established that the land in question was agricultural land and further, had not produced relevant evidence of fulfilment of conditions specified in section 10(37)(ii). Held that though the Circular authorizes Pr. CIT to consider even merits of refund claim while exercising delegated power u/s. 119(2)(b), this was illegal for the mandate of the Act cannot be avoided through any administrative circular issued by the Board. Since Pr. CIT had gone into merits of the claim for refund when the application u/s. 119 (2) was filed for condonation of delay in preferring said refund claim and a decision on merits on delay condonation application had not been taken by Pr. CIT, matter remitted for fresh consideration. (AY. 2012-13)

Daisy v. PCIT (2024) 296 Taxman 80 / 336 CTR 335 (Ker)(HC)

1454 **S. 119: Central Board of Direct Taxes-Instructions-Quasi-judicial authorities-Order should be a speaking order granting a reasonable opportunity of being heard. [S. 119(2)(b), Art. 226]**

An application seeking condonation of delay in filing return of income for AY 2012-13 and AY 2013-14 was filed by the assessee which was rejected by CBDT without providing the assessee an opportunity of being heard and without providing the material relied upon. Aggrieved, the assessee preferred a writ before the Hon'ble Madras High Court held that the power under section 119(2)(b) being quasi-judicial in nature and which could result in adverse civil consequence, must be exercised in compliance with principles of natural justice. Since the impugned order does not assign reason but only contains the conclusion, the order was set aside with a direction to consider the application after granting a reasonable opportunity of hearing within a period of 8 weeks from receipt of the Hon'ble High Court order and pass a speaking order. (AY. 2012-13, 2013-14)

Envission Communication (P.) Ltd. v. PCIT (2024) 460 ITR 620 / 296 Taxman 520 (Mad) (HC)

1455 **S. 120 : Jurisdiction of income-tax authorities-Search and seizure-Third party-Not connected with the assessee-No cause of action-Writ petition is dismissed. [Art. 226]**

Assessee was a partner in a partnership firm called S. R. S. Mining. In respect of the firm, search and seizure operation was conducted by DGI (Inv.), Chennai at its office and at its partners residence. Files relating to assessee were transferred from DCIT, Non-Corporate Circle 2, Chennai to DCIT, Central Circle 2. Petitioner lodged a complaint that letter transferring files of assessee-firm was issued without jurisdiction. Thereafter petitioner filed writ petition seeking a direction to revenue to take action on said complaint. Revenue contended that petitioner was a rank-third party, who was not related to assessee or assessment proceedings in any manner, he did not have any locus

standi to file present writ petition. Dismissing the petition the Court held that since it was unclear as to how petitioner had any interest in subject matter of assessment or investigation and assessee and a Specific Officer of revenue were not made parties to this writ petition, discretionary jurisdiction could not be exercised in favour of petitioner. (AY. 2017-18)(SJ)
B. Ramamoorthy v. DGI (Vigilance) (2024) 299 Taxman 468 (Mad.)(HC)

S. 120 : Jurisdiction of income-tax authorities-No order is passed transferring the jurisdiction-Order is set aside. [S. 2(7A), 120(4)(b), 127, 144C(13)] 1456
When Jurisdiction of Additional Commissioner to conduct scrutiny assessment and pass assessment order under the Act is under challenge, the Revenue is under an obligation to bring on record copy of order(s) transfer-ring jurisdiction to the Additional Commissioner to justify the basis of the authority of the Additional Commissioner to perform his functions and exercise powers of an Assessing Officer and pass the assessment order. Where assessee's case was transferred from Deputy Commissioner to Additional Commissioner and again back to Deputy Commissioner, and thereafter again to Additional Commissioner, in absence of separate orders passed under section 120(4)(b) authorising Additional Commissioner to perform functions and exercise powers of an Assessing Officer under section 2(7A) and also in absence of any order passed transferring jurisdiction under section 127, impugned final assessment order passed under section 143(3), read with section 144C(13), in case of assessee, by Additional Commissioner was without jurisdiction and, hence, was to be set aside. (AY. 2007-08)
ITO (IT) v. Tata Steel Ltd. (2024) 207 ITD 345 /230 TTJ 717/240 DTR 233 (Mum) (Trib.)

S. 127 : Power to transfer cases-Search-From ITO Delhi to DCIT, Karnal Haryana-Incriminating material-Transfer of case on grounds of administrative convenience and meaningful assessment-SLP is dismissed. [S. 124, 131(IA), 132, Art, 136] 1457
A search operation was conducted on Zee Lab Premises group's premises in Karnal, Haryana, under section 132, leading to discovery of incriminating material related to assessee. A show cause notice was issued to assessee, whereby, for purpose of an administrative, convenience, coordinated investigation and assessment, case of assessee was sought to be centralized at DCIT, Central Circle, Karnal, Haryana from ITO, Delhi and assessee was called upon to furnish objections, if any, against proposed transfer. Assessee objected, citing no link to searched party. After considering objections, revenue centralized and transferred case from ITO Ward-51(1) Delhi to DCIT, Central Circle, Karnal, under section 127. On writ High court held that there is no fundamental right to be assessed at a particular place and when powers are invoked under section 127, territorial nexus becomes irrelevant and what becomes more prominent are interests of adjudication and collection of taxes. It further held that since assessee had duly been given an opportunity of hearing and after considering his reply, revenue had passed impugned order and moreover, details furnished by assessee in response to notice showed that certain transactions pertaining to unsecured loans existed between assessee and searched persons, it could be said that, powers under section 127 was invoked on grounds of administrative convenience and meaningful assessment warranting no interference. SLP filed against the order of High Court is dismissed. (AY. 2017-18)
Mark Gulati v. PCIT (2024) 300 Taxman 92/ 469 ITR 1 (SC)

Editorial : SLP dismissed, Dollar Gulati v. PCIT(2024) 162 taxmann.com 348/471 ITR 96 (Delhi)(HC) / Mark Gulati v. PCIT (2024) 162 taxmann.com 348/471 ITR 96 (Delhi) (HC)

1458 **S. 127 : Power to transfer cases-Opportunity of hearing-Bangalore to Delhi-High Court held that no opportunity of hearing was given-Order High Court is affirmed-SLP of Revenue is dismissed. [S. 124, Art. 136]**

High Court held that section 127 connotes providing reasonable opportunity to assessee and passing assessment order based on reasons and where no reasonable opportunity had been provided before transferring case and officer of Bangalore had sent Notice and Assessment order to assessee who was a resident of Delhi, it was in total violation of section 127. SLP filed against the order of High Court is dismissed. (AY. 2012-13 to 2018-19)

Dy. CIT v. Sunil Kumar Sharma (2024) 300 Taxman 601/469 ITR 271 /(2025) 302 Taxman 9 (SC)

Editorial :Dy. CIT v. Sunil Kumar Sharma (2024) 159 taxmann.com 179 /469 ITR 197 (Karn)(HC)

1459 **S. 127 : Power to transfer cases-Search and Seizure-Opportunity of being heard-Coordinated investigation-Transfer from Coimbatore to Kolkata-Transfer is valid. [Art. 226]**

Dismissing the petition the Court held that incriminating documents were seized which were directly linked to assessee's involvement in lottery business, since said incriminating materials were found by Kolkata Office and said materials were closely linked with assessment of assessee, transfer of case of assessee from Coimbatore to Kolkata is justified.

Arise Industries & Agency (P) Ltd. v. PCIT (2024) 167 taxmann.com 152 / 341 CTR 321 / 243 DTR 89 / 8 NYPCTR 1144 (Mad)(HC)

1460 **S. 127: Power to transfer cases-Transfer of case from Coimbatore to Kolkata where the search was conducted-The incriminating documents seized had a direct link to Petitioner's business hence the transfer of the case was justified. [S. 132, Art. 226]**

The Petitioner challenged a Notification issued under section 127 of the Act thereby ordering the transfer of the Petitioner's case from Coimbatore where the Petitioner's Registered Office was situated, to Kolkata where a search was conducted and some incriminating documents were seized, which had a direct link to Petitioner's business. In such circumstances, the Hon'ble Madras High Court opined that it will be appropriate to carry out the assessment through circle where incriminating material has been seized based on the place of business of Petitioner, irrespective of the location of the Registered Office. The Hon'ble Court observed that such transfer by virtue of section 127 of the Act was justified and that no prejudice would be caused due to the Notification as no adverse order was passed except the transfer of Petitioner's case. (SJ)

Arise Industries and Agency Pvt. Ltd. v. PCIT (Central) (2024) 341 CTR 321 /167 taxmann. com 152 (Mad)(HC)

S. 127 : Power to transfer cases-Opportunity of hearing-No reasonable opportunity had been provided before transferring case and officer of Bangalore to Delhi-Order of single Judge is affirmed. [S. 124, Art. 226] 1461

Dismissing the appeal of the Revenue the against the single Judge, division bench held that where no reasonable opportunity had been provided be-fore transferring case and officer of Bangalore had sent notice and Assessment order to assessee who was a resident of Delhi, it was in total violation of section 127. Order of Single Judge is affirmed. (AY. 2012-13 to 2018-19)

Dy. CIT v. Sunil Kumar Sharma (2024) 159 taxmann.com 179 /469 ITR 197 (Karn)(HC)

Editorial : CIT (Appeals) v. Sunil Kumar Sharma (2024) 300 Taxman 601 /469 ITR 271/(2025) 302 Taxman 9 (SC)

S. 127 : Power to transfer cases-Search-From ITO Delhi to DCIT, Karnal Haryana-Incriminating material-Transfer of case on grounds of administrative convenience and meaningful assessment –Writ petition is dismissed. [S. 124, 131(IA), 132, Art, 136] 1462

A search operation was conducted on Zee Lab Premises group's premises in Karnal, Haryana, under section 132, leading to discovery of incriminating material related to assessee. A show cause notice was issued to assessee, whereby, for purpose of an administrative, convenience, coordinated investigation and assessment, case of assessee was sought to be centralized at DCIT, Central Circle, Karnal, Haryana from ITO, Delhi and assessee was called upon to furnish objections, if any, against proposed transfer. Assessee objected, citing no link to searched party. After considering objections, revenue centralized and transferred case from ITO Ward-51(1) Delhi to DCIT, Central Circle, Karnal, under section 127. On writ High court held that there is no fundamental right to be assessed at a particular place and when powers are invoked under section 127, territorial nexus becomes irrelevant and what becomes more prominent are interests of adjudication and collection of taxes. It further held that since assessee had duly been given an opportunity of hearing and after considering his reply, revenue had passed impugned order and moreover, details furnished by assessee in response to notice showed that certain transactions pertaining to unsecured loans existed between assessee and searched persons, it could be said that, powers under section 127 was invoked on grounds of administrative convenience and meaningful assessment warranting no interference. Writ petition is dismissed. (AY. 2017-18)

Dollar Gulati v. PCIT(2024) 162 taxmann.com 348/ 471 ITR 96 (Delhi)(HC)

Mark Gulati v. PCIT (2024) 471 ITR 96 /162 taxmann.com 348 (Delhi)(HC)

Editorial : SLP is dismissed, Mark Gulati v. Pr. CIT (2024) 300 Taxman 92 /469 ITR 1 (SC)

1463 **S. 127 : Power to transfer cases-Centralisation of assessment-Once case is centralised transfer of case without decentralisation order or transfer order is contrary to provision-Transfer of case is invalid-Transferee Assessing Officer has no inherent jurisdiction to pass assessment orders making additions to income-Assessment orders and orders of Tribunal is set aside-Liberty Given To Proceed In Accordance With Law Through Jurisdictional Assessing Officer-Interpretation of taxing statute-Machinery Provision. [S. 56(2)(viia), 120, 124, 127(2), Art. 226]**

Allowing the petition the Court held that the case of the assessee had been transferred from the jurisdictional Assessing Officer to the Deputy Commissioner, Central Circle-16, New Delhi to the Income-tax Officer, Ward 21(1), New Delhi without passing the mandatory transfer order under section 127 which was a prerequisite before transferring the case and there-fore, the assessments were invalid. By way of a centralisation order dated July 16, 2008, the case of the assessee was transferred from the jurisdictional Assessing Officer to the Deputy Commissioner, Central Circle-16, New Delhi. From the assessment years 2008-09 to 2015-16, the assessee was being assessed by the Deputy Commissioner, Central Circle-16/20, New Delhi. No decentralisation order had been furnished to evidence a legitimate transfer of the assessee's case from the Deputy Commissioner, Central Circle-16/20, New Delhi to the Income-tax Officer, Ward 21(1), New Delhi. The Department's contention that by virtue of an order dated November 15, 2014 passed under section 120 by the Assistant Commissioner read with Central Board of Direct Taxes Notification dated October 22, 2014, the Income-tax Officer, Ward 21(1), New Delhi had inherent jurisdiction over the assessee was not tenable. Such a situation could not be countenanced in law as it would lead to confusion and chaos since at a point, one or more Assessing Officers not only would have jurisdiction over the assessee but also could proceed with the assessment proceedings simultaneously. That on perusal of the order dated November 15, 2014 passed under section 120 by the Assistant Commissioner read with the Central Board of Direct Taxes notification dated October 22, 2014, would reveal that these notifications could not run contrary to the legislative mandate of section 127. The jurisdiction of the Deputy Commissioner, Central Circle-16, New Delhi over the case of the assessee was assigned by a separate order of centralisation dated July 16, 2008. Therefore, once the case of the assessee was centralised, the transfer of the case of the assessee to another Assessing Officer would not be permissible without a decentralisation order or transfer order under section 127 contrary to the underlying objective which the Act sought to achieve by virtue of the powers enshrined under section 127. Accordingly, the assessment orders passed, for the assessment years 2014-15 and 2015-16, by the non-jurisdictional Assessing Officers making additions under section 56(2)(viia) were set aside. Since the assessment orders were quashed and set aside on the ground of jurisdictional error, the orders of the Tribunal challenged in the appeals were also set aside. The Revenue was given liberty to proceed through jurisdictional authorities, if otherwise permissible, in accordance with law. (AY. 2014-15, 2015-16)

Raj Sheela Growth Fund Pvt. Ltd. v. ITO (2024)466 ITR 26/165 taxmann.com 182 / 340 CTR 113 (Delhi)(HC)

S. 127 : Power to transfer cases-Search and seizure-Transfer from Hyderabad to Mumbai-Opportunity of hearing was given-Transfer is justified-Writ petition dismissed. [Art. 226] 1464

Assessing Officer sought permission from Commissioner under section 127 seeking transfer of case of assessee from jurisdiction of Assessing Officer at Hyderabad to jurisdiction of Assessing Officer at Mumbai. Opportunity of hearing is given to the petitioner. On writ dismissing the petition the Court held that the reason which necessitated authorities to pass impugned order under section 127 was centralized and coordinated investigation and the assessee was given an opportunity of hearing and reasons had also been given in order of transfer. Order of transfer is affirmed. (AY. 2023-24)

Akshara Enterprises (P.) Ltd. v. PCIT (2024) 297 Taxman 422 / 339 CTR 380 (Tel.)(HC)

S. 132: Search and Seizure-Warrant issued-Search premises left blank-Witnesses from different place-Panchnama-Search invalid-Documents to conduct search fabricated-High Court has directed the Department to refund cash of Rs. 5.00 crores to assessee with interest at 12% p. a. along with costs of Rs. 20,000-SLP of Revenue is dismissed as infructuous as subsequent assessments have been made. [S. 132A, 132B, Art. 14,136, 300A] 1465

Cash was seized from one of the employees (the assessee before the Court) by the Telangana police and handed over to the Income Tax Department. The department, the very next day, conducted search operations under section 132 on both the employer and the employee. In the warrant issued, the place of the search was left blank, and the names of the two witnesses were from locations different from where the search was con-ducted. The Court ruled that a warrant issued under section 132 by the Principal Director of Income Tax, which fails to mention the search place, is invalid. The Court further observed that the documents (Panchnama) used to conduct the search were fabricated, as the witnesses were from places different from the search location. High Court has directed the Department to refund cash of Rs. 5.00 crores to assessee with interest at 12% p.a. along with costs of Rs. 20,000. SLP of Revenue is dismissed as infructuous as subsequent assessments have been made. (AY. 20019-20)

PDIT (Inv) v. Vipul Kumar Patel (2024) 301 Taxman 408 (SC)

Editorial: Vipul Kumar Patel v. UOI [2024] 167 taxmann.com 140 (Telangana) (HC)

S. 132 : Search and seizure-Return of original documents seized-Until completion of assessment proceedings, petitioner is not entitled for original documents and he is entitled to get only a copy of those documents. [Art. 226] 1466

Petitioner filed writ petition seeking direction to respondents to return his original documents seized from his house during raid conducted by officials against his son assessee. Petitioner sought return of documents which were not only seized from premises of petitioner, but also from third party houses. Respondents submitted that only five documents were seized from premises of petitioner and these five documents were evidence to prove case against his son assessee, as they pertained to transactions between petitioner and his son. Respondents further submitted that only on completion of entire assessment proceedings, they could return original documents. Court held

that since petitioner also sought return of documents which were seized from third party houses, he had no right to seek those documents which were seized from third party premises. Further, petitioner is entitled to only five documents seized from his premises, however, he could only seek those documents upon completion of assessment proceedings. Until completion of assessment proceedings, petitioner is not entitled for original documents and he is entitled to get only a copy of those documents.
A. Selvaraj v. PCIT, Central (2024) 301 Taxman 451 (Mad.)(HC)

1467 **S. 132 : Search and seizure – Validity-Reason to believe-Recorded reason does not disclose any information-Search action is under quashed and set aside. [R. 112(2),Art. 226]**
Allowing the petition the Court held that the authority must have information in his possession on the basis of which a reasonable belief can be founded that the person concerned has omitted or failed to produce the books of accounts or other documents for production of which summons or notice has been issued or such person will not produce such books of accounts or other documents even if summons of notice is issued to him, or such person is in possession of any money, bullion or other valuable articles which represents either wholly or partly income or property which has not been or would not be disclosed has to be the basic fulcrum on which, the exercise of the power under S 132 would revolve. Such reasons may have to be placed before the High Court in the event of a challenge to formation of the belief of the competent authority in which event the Court would be entitled to examine the reasons for formation of the belief, though not the suffice or adequacy thereof. Court held that recorded reason does not disclose any information. Search action is quashed and set aside. Relied on *DGIT (Inv). v. Spacewood Furnishers (P) Ltd. (2015) 277 CTR 322/ 119 DTR 201 (SC), (2015) 12 SCC 179, PDIT (Inv.) v. Laljibhai Kanjibhai Mandalia (2022) 327 CTR 353 / 215 DTR 417 (SC)*
Balkrushna Gopalrao Buty v. PDI (Inv) (2024) 340 CTR 75 / 238 DTR 145 (Bom)(HC)

1468 **S. 132 : Search and seizure – Reason to believe – Procedural lapses – Matter remanded. [S. 127, 132(1), 132(9A), 153A, 153C, 281B, 292B, CrPC, Rule 112, Arts. 20, 21, 32, 226, 265]**
The assessee challenged search and seizure proceedings and consequential notices. The Single Judge dismissed the writ petitions without examining allegations of mala fides, high-handedness, denial of medical care (Art. 21), non-furnishing of reasons in transfer orders (S.127), and improper recording of satisfaction under S.153C. The Division Bench held that search powers must conform to statutory and constitutional safeguards, and failure to enquire into these issues was an error. Questions relating to privacy, *K.S. Puttaswamy v. UOI (2017) 10 SCC 1, illegally obtained evidence Pooran Mal. Director of Inspection (Inv.) & Ors. 1974 CTR (SC) 25 : (1974) 1 SCC 345), transfer orders Ajantha Industries v. CBDT 1976 CTR 79 / (1976) 1 SCC 1001), and seized material PCIT v. Abhisar Buildwel (2023) 454 ITR 212/ 332 CTR 729/ 225 DTR 497 (SC), CIT v. Sinhagad (2017) 397 ITR 344/ 297 CTR 441 / 156 DTR 161 (SC)* require reconsideration. On appeal the order of Single Judge set aside; matter remanded for fresh consideration on all issues

including validity of search, transfer, recording of satisfaction, and Art. 21 violation. (AY. 2014-15 to 2019-20)

SNJ Breweries (P) Ltd. v. PDIT (Inv) (2024) 340 CTR 436 / 241 DTR 233 / 468 ITR 37 (Mad)(HC)

Editorial : Chandran Somasundaram v. PDIT (2023) 450 ITR 188 / 330 CTR 237/222 DTR 201/ 145 taxmann.com 6 (Mad)(HC) set aside.

S. 132 : Search and seizure-Reason to believe must exist at time of issue of warrant of authorisation for search-Department must give specific details to justify search-Merely on basis of warrant of authorisation-Search and seizure invalid-Survey-Notice of survey issued pursuant to search is not valid-Interpretation of Taxing Statutes-Strict construction. [S. 131(IA), Art. 226] 1469

Allowing the petition the Court held that the issuance of the notice under section 131(1A) after conducting of the search operation under section 132 was illegal and without jurisdiction and contrary to the provision which was very clear and there was no ambiguity. Even if there was an ambiguity the benefit of the ambiguity must go the assessee. The Legislature having clearly laid down the manner in which the notice under section 131(1A) was to be issued, the said manner had to be mandatorily followed. Any manner other than what was provided in the provision was necessarily forbidden. There could not have been any material that could be a reason to suspect that any income had been concealed or likely to be concealed by the assessee. Held that since the Principal Director (Investigation) and the Deputy Director (Investigation) had stated that the search and seizure action under section 132 was conducted on the basis of the authorisation issued by the Principal Director (Investigation), Guwahati and that during the post search investigation, the Deputy Director (Investigation), Dibrugarh had issued the notices under section 131(1A), it was evident that the search operation under section 132 had been carried out without issuance of notice under section 131(1A) but merely on the basis of the authorization. Therefore, the search conducted under section 132 and the subsequent notices under section 131(1A) were illegal and without jurisdiction. That the Department had not placed any material whatsoever to indicate that the assessing authority had any material on the basis of which he had reasons to suspect that the assessee had concealed or was likely to conceal any income. The very fact that the Department had issued notices under section 131(1A) after the search and seizure operation under section 132 was conducted, showed that there was neither any reasons to suspect nor material before the Assessing Officer on the basis of which search operation could have been conducted under section 132. Hence, the two essential conditions being absent before the search was conducted, the search was without jurisdiction. The authorization issued for the search, the consequent search and seizure under section 132 and the notices issued under section 131(1A) were quashed and set aside. Taxing statutes are to be interpreted strictly and the assessee cannot be taxed by inference or by analogy. In case of any ambiguity in the taxing provision, the benefit of such ambiguity should go to the taxpayer.

Pawan Kumar Garg v. UOI (2024) 465 ITR 80 / 164 taxmann.com 1074 /339 CTR 404 (Gauhati)(HC)

1470 **S. 132: Search and seizure –Freezing bank accounts-As per section 132(8-A), order of freezing bank accounts could not remain in force for a period exceeding sixty days from date of order. [S. 132(3), 132(8A), Art. 226]**

During search and seizure operation under section 132, several persons/entities were found to be involved in hawala transactions through bogus RTGS and crypto currencies. Pursuant to same and on basis of certain suspicious transactions, accounts of assessees were 'debit frozen' i. e. no withdrawals were allowed to avoid leakage of revenue. Order was issued on 30-4-2023, rigour period stood concluded by 30-6-2023. On writ, the Court held that perpetuation of freezing of bank accounts beyond 60 days was completely unsustainable and de hors the provisions. Thus, letter dated 30-4-2023 having already lived out its life ceased to have any significance by virtue of operation of law. The same was therefore to be declared unenforceable and it was directed to 'de-freeze" the concerned bank accounts of assessees.

Pooja Trading Co. v. Dy. DIT (Inv.) (2024) 299 Taxman 534/338 CTR 842/ 467 ITR 226 (Delhi)(HC)

Rama Trading Co v. Dy. DIT (Inv.) (2024) 299 Taxman 534/338 CTR 842 / 467 ITR 226 (Delhi)(HC)

1471 **S. 132 : Search and seizure-Satisfaction note did not disclose any information which the authorities to have reason to believe were satisfied-Search and seizure action is quashed-Revenue may utlise the information or material in such proceedings as they may be so advised and to utilise the information or material in such proceeding against the assesse as is permissible in law. [S. 132(1)(a) to (c), Art. 226]**

The petitioners/assessees comprising of assessee-company, its directors and were the directors' relatives leading manufacturers of forging and engineering products required in the automobile industry. The assessees were regularly assessed to income-tax and wealth tax and no penalty under section 271(1)(c) had ever been levied upon the assessees for any concealment or furnishing inaccurate particulars of income. A search was conduct-ed at the business premises of the assessee-company as well as at residential premises of other assessees, a (directors and their relatives) pursuant to an authorization issued by Director of Income-tax (Investigation) under section 132(1). The assessees submitted that by the initiation of search proceedings and also by the manner in which the proceedings were con-ducted, they were apprehensive that the Revenue would, without jurisdiction or authority of law, proceed against the assessees to make assessments and/or reassessments of the past six assessment years in the case of all petitioners and raise huge demands by way of tax, interest and penal-ties, which would cause hardship and prejudice to the assessees. It was the assessee's case that authorizations issued against them were unconstitutional, ultra vires, invalid, without jurisdiction, etc., and were liable to be quashed and set aside on the ground that the conditions specified under section 132(1)(a) to (c) are not satisfied. Before the Court the Revenue produced the contents of the file of the department given in a sealed envelope by respondents has been read. Having considered the contents thereof, it was opined that the file does not disclose any information which would lead the Authorities to have a reason to believe that any of the contingencies as contemplated by section 132(1)(a) to (c) are satisfied. The reasons recorded, only indicates a mere pretence.

The material considered is irrelevant and unrelated. For the sake of maintaining the confidentiality, the reasons recorded in the file are not being discussed, suffice to say that the information noted therein is extremely general in nature. The reasons forming part of the satisfaction note have to satisfy the judicial conscience. One is not satisfied. The satisfaction note does not indicate at all the process of formation of reasonable belief. The adequacy or sufficiency of the information has not been questioned. Court held that apart, the note also does not contain anything altogether regarding any reason to believe, on account of which, there is total non-compliance with the requirements as contemplated by section 132(1) which vitiates the search and seizure. It does not fulfil the jurisdictional pre-conditions specified in section 132. Accordingly the Court held that the action of respondents taken under section 132(1) cannot be to sustained The same is, therefore, quashed and set aside. As a result, all consequent actions and notices cannot be sustained and accordingly quashed and set aside. Court also held observed that as regards the averments in the affidavit in reply, the views expressed in *Balkrushma Gopalrao Buty v. Principal Director (Investigation) [Writ Petition No. 1729 of 2024, dated 23-4-2024]* is agreeable that respondents cannot rely upon what has been unearthed pursuant to the search and seizure action as the information giving a reason to believe as contemplated under section 132(1) must be prior to such seizure. Court also clarified that order quashing the search proceedings does not preclude the Revenue from taking any such proceedings as they may be advised and to utlise the in-formation or material in such proceedings as they may be so advised and to utilise the information or material in such proceeding against the assesse as is permissible in law. Followed *Balkrushma Gopalrao Buty v. Principal Di-rector (Investigation) [Writ Petition No. 1729 of 2024, dated 23-4-2024](Bom)(HC) referred, PDIT(Inv)) v. Llajibhai Kanjibhai Mandalia (2022) 288 Taxman 361/ 446 ITR 18 (SC), DGIT v. Spacewood Furnishers (P) Ltd (2015) 232 Taxman 131/ 12 SCC 179* (AY. 2008-09)

Echjay Industries (P.) Ltd. v. Rajendra (2024) 299 Taxman 432 /340 CTR 82 / (2025) 475 ITR 331 (Bom.)(HC)

Editorial : SLP of revenue dismissed, DIT (Inv) v. Echjay Industries (P.) Ltd [2025] 175 taxmann.com 846(SC)

S. 132 : Search and seizure-No incriminating material found during the course of search action-Completed assessment cannot be reopened. [S. 153A, 260A] 1472

Allowing the appeal the Hon'ble court held that the revenue did not secure any incriminating material qua the assessee during the course of search. No incriminating material even according to the revenue was found during the search action. A completed assessment could be reopened only if incriminating material was found during the course of search action. Hence, the addition made by the AO is unjustified and deleted. (AY. 2006-07)

Shyam Sunder Jindal v. Asst. CIT (2024) 461 ITR 96 (Delhi)(HC)

1473 **S. 132: Search and Seizure – Strictures-Warrant issued-Search premises left blank-Witnesses from different place-Panchnama-Search invalid-Documents to conduct search fabricated-An income tax inspection and/ or investigation would be permissible only in respect of a past event but not for possible future contingencies-Department is directed to refund cash of Rs. 5.00 crores to assessee with interest at 12% p.a. along with costs of Rs. 20,000. [S. 132A, 132B, Art. 14, 226, 300A]**

Cash was seized from one of the employees (the assessee before the Court) by the Telangana police and handed over to the Income Tax Department. The department, the very next day, conducted search operations under section 132 on both the employer and the employee. In the warrant issued, the place of the search was left blank, and the names of the two witnesses were from locations different from where the search was con-ducted. On writ the Court ruled that a warrant issued under section 132 by the Principal Director of Income Tax, which fails to mention the search place, is invalid. The Court further observed that the documents (Panchnama) used to conduct the search were fabricated, as the witnesses were from places different from the search location. Court held that an income tax inspection and/ or investigation would be permissible only in respect of a past event but not for possible future contingencies; and if assessee was going to disclose and explain cash of Rs. 5.00 crore in its income tax re-turns for 2019-20, there was no basis for proceeding with any coercive action against it as it would clearly violate Article 300-A of Constitution of India. Department is directed to refund cash of Rs. 5.00 crores to assessee with interest at 12% p.a. along with costs of Rs. 20,000 (AY. 20019-20)

Vipul Kumar Patel v. UOI [2024] 167 taxmann.com 140 (Telangana) (HC)

Editorial: SLP of Revenue is dismissed, as infructuous as subsequent assessments have been made. PDIT (Inv) v. Vipul Kumar Patel (2024) 301 Taxman 408 (SC)

1474 **S. 132: Search and seizure-undisclosed income-bogus purchases-failure to rebut statement of the broker by documentary evidence by the Assessee, restricting addition to 12.5 percent is held to be proper [S. 132]**

Held that the Settlement Commission had not discarded the evidentiary value of the statement of the broker who had admitted to the modus operandi of availing of bogus purchase bills. The assessee had not raised the contention that the person whose statement was recorded was neither an employee nor a partner and that the assessee had not transacted with the person, before the Settlement Commission nor the person had not denied the transaction between him and the assessee. The assessee had failed to rebut the statement by any documentary evidence. In the absence of any contradictory evidence, an addition to the gross profit margin at 12.5 percent on the bogus purchase was confirmed. Order of CIT(A) is affirmed. (AY. 2013-14, 2014-15)

Akshar Shanti Realtors P. Ltd. v. Dy. CIT (2024) 111 ITR 25 (SN)(Mumbai)(Trib.)

Dy. CIT v. Nilesh Shantilal Tank v. Dy. CIT (2024) 111 ITR 25 (SN)(Mumbai)(Trib.)

S. 132(3) : Search and seizure-Prohibitory order-Article-Liquor-Contention of Revenue that liquor cannot be included in the expression of valuable article is rejected-Order issued under section 132(3) is quashed on the ground that Revenue could have invoked section 132(1) of the Act-SLP of Revenue is dismissed. [S. 132, Art. 136] 1475

The petition is filed for invoking the S. 132((3) prohibiting the petitioner from removing articles (Liquor bottles) in the cup board at the residence of the petitioner. Court held that Section 132(3) can be invoked for imposing prohibitory order in regard to various articles which for reasons other than the reasons mentioned in second proviso to S. 132(1) make it impossible or impracticable for the competent authority to take physical possession or to remove. Liquor is undoubtedly a thing which is a valuable article since it has value in the market. Thus, by the very wide sweep and extent of expression "valuable article", liquor stands included within the expression "valuable article". Contention of the Revenue that power of seizure of liquor is exclusively vested with Excise authorities and thus the Revenue authorities by implication are denuded of any such power of seizure of liquor is untenable order is an outcome of colourable exercise of power by the Revenue authorities which have wrongly invoked S. 132(3) since the facts and circumstances were suitable enough for invocation of S. 132(1) seizing the article. Accordingly the petition is allowed. SLP of Revenue is dismissed. (AY. 2023-24)

ITD v. Dilip Mehta (2024) 300 Taxman 584 (SC)

Editorial: SLP of Revenue is dismissed, Dilip Mehta v. ITD (2024)) 337 CTR 342/ 300 Taxman 584 (MP)(HC)

S. 132A : Powers-Requisition of books of account-Cash seized by Police-S. 132A does not empower the Department to requisition a Court to deliver any seized assets, and the provision is referable only to an officer or authority-Order passed by the Magistrate is quashed-Asst. Director with whom the amounts were entrusted to return the amount released-The petitioner is directed to file the return disclosing the amount and Revenue is directed to finalise the assessment in accordance with law. [S. 132, 147, 148] 1476

The petitioner has filed petition before the High Court against the order passed by the Magistrate who has handed over the cash seized by Police. Allowing the petition the Court held that under S. 132B, an asset seized during a search under S. 132 or requisition under S. 132A can be applied by the Department to settle any existing liability of the person. On the facts the seizure was effected on 8th Oct., 2022. Income earned by a person during the financial year 1st April, 2022 to 31st March, 2023 is to be assessed in the year 2023-24. 1st petitioner, being an assessee is bound to file a return of income not before 31st July, 2023. If the 1st petitioner does not disclose the income that has been detected, the Department would have time to complete the assessment till 31st Dec., 2024. Department would have the power to assess escaped income under S. 147/148 before the expiry of three years from the end of the relevant assessment year. S. 132A would not empower the Department to requisition the Magistrate. S. 132B would also have no application. 1st petitioner is yet to file his return. He would have to disclose the sum of Rs. 40 lakhs, which was seized from his employee. Revenue can thereafter complete the assessment in accordance with the provisions of the Act. As there is no valid order of assessment and no culminated demand for income-tax, the

Revenue cannot aspire to keep the money on the premise that there will be demand later in point of time. At present, there is no authority of law under which the money can be demanded and be kept by the Revenue. Order passed by the Magistrate ordering the handing over of the amount to the Revenue cannot be sustained. *Abdul Khader v. Sub-Inspector of Police & Ors. (1999) 240 ITR 489* / *(2000) 158 CTR (Ker) 319 (HC)* (AY. 2023-24)
R. Ravirajan v. State of Kerala (2024) 338 CTR 684 / *471 ITR 131 (Ker)(HC)*
Vijay Bharti v. UOI (2024) 338 CTR 684 / *471 ITR 131 (Ker) (HC)*

1477 **S. 132B : Application of seized or requisitioned assets-Search and seizure-Strictures-Return of seized cash-Inordinate delay in returning seized cash-Clear case of high handedness on the part of the officers of the Revenue-Entitled to interest on amount returned-SLP of Revenue is dismissed. [S. 132, Art. 136]**
Allowing the petition the Court held, that notwithstanding the order of the Tribunal which attained finality on September 25, 2014, the Revenue did not consider it fit to return the cash of Rs. 2,60,000 that was seized on or about July 9, 1996. Moreover, even after the Principal Commissioner passed the order under section 132B of the Act, on December 31,2019, the Revenue did not consider it fit to process and refund the amount. Even after the petition was filed and served and the lawyer appeared for the Revenue, the Revenue still did not consider it fit to return the money. Therefore, there had been an inordinate delay and this was nothing but a clear case of high handedness on the part of the officers of the Revenue. The assessee would be entitled to interest at 12 per cent. per annum for the post-assessment period, i. e., from September 25, 2014 until payment/realisation. Court also held that the Income-tax Act, 1961 recognises the principle that a person should only be taxed in accordance with law and hence where excess amounts of tax are collected from an assessee or any amounts are wrongfully withheld from an assessee without authority of law the Revenue must compensate the assessee. SLP of the Revenue is dismissed. (AY. 1991-92)
Jt. CIT v. Vinoda B. Jain (2024) 468 ITR 4 /301 Taxman 237 (SC)
Editorial : Vinoda B. Jain v. Jt. CIT (2023) 335 CTR 1079 / 156 taxmann.com 185 / (2024) 462 ITR 58 (Bom.)(HC)

1478 **S. 132B : Application of seized or requisitioned assets-Cash seized-Shall release-Assessing Officer is directed to decide application of assessee and if nature and source of cash seized was duly explained, such refundable amount would attract liability of interest under section 132B(4) read with Matter remanded. [S. 132, 132(4), Art. 226]**
Assessee, a jeweller, handed over cash of Rs. 36.12 lakhs to his worker (Om) requiring him to undertake rail journey to Kolkata to buy jewellery. On 31-8-2022, the said worker was apprehended by Government Reserved Police (GRP) at the Railway Station and in course of search by police authorities, Rs. 36.12 lakhs was recovered from his bag. Later, that information was passed on to Income Tax Authority who subjected cash recovered from Om to proceeding under section 132 (1A). On 15-9-2022, assessee made an application to the Assessing Officer in terms of section 132B(1)(i) read with proviso to section 132B(1)(i) to release amount seized. On writ the Court held that provisions of section 132B(1)(i) being directory, jurisdiction of Assessing Authority to deal with

assessee's application dated 15-9-2022 did not lapse or abate upon expiry of period of 120 days. Therefore, Assessing Officer was to be directed to decide application of assessee and if nature and source of cash seized was duly explained, such refundable amount would attract liability of interest under section 132B(4) read with section 132B(1) Matter remanded.
Dipak Kumar Agarwal v. Assessing Officer (2024) 298 Taxman 587 / 466 ITR 419/ 338 CTR 668 (All.) (HC)

S. 133A :Power of survey-Income from undisclosed sources-Construction of commercial and residential buildings-Director disowning contents of paper found in the course of survey-Addition is deleted. [S. 133(6)] 1479
Held that merely on the basis of piece of paper found during the survey these could not be considered to be credible evidence in the eyes of law to prove the receipt of unaccounted money by the assessee in respect of all the flats sold by it. Neither the assessee nor its directors had accepted the contents of the piece of paper the director having disowned the contents of the paper, it would be not admissible. The enquiries made by the Assessing Officer with some of the buyers did not also show that the assessee was suppressing sale receipts. The Assessing Officer did not have any credible material with him to support the addition. The Assessing Officer could not have resorted to extrapolation on the basis of assumptions and presumptions. The addition relating to additional consideration should be restricted to the evidence found and should not be extrapolated. Hence the entire addition was deleted. (AY. 2018-19)
BKS Galaxy Realtors LLP v. Dy. CIT (2024)116 ITR 175 (Mum)(Trib)

S. 133A : Power of survey-Statement in the course of survey-Bogus purchases-Statement was retracted within six days-Assessment based solely upon statement of one partner could not be sustained-Without rejecting books of account no addition can be made as bogus purchases-The acceptance by the assessee of the addition in one assessment year could not lead to a conclusion that in all these assessment years, the assessee had inserted bogus purchases in a similar way-Reassessment is valid. [S. 131, 131(IA), 133, Indian Evidence Act, 1872, S 31] 1480
Held that the Department never accepted the retraction statement filed by the assessee on February 14, 2018. There was a prima facie material available in the form of statement recorded under section 131 of the Act from the partner in view of the bogus purchase said to be recorded by the assessee in its books of account, coupled with certain other documents to suggest that income had escaped assessment. With a view to examine these materials which came to the knowledge of the Assessing Officer subsequent to the original assessment, the reassessment proceedings were initiated. The doctrine of "change of opinion" could not act as an embargo for exercise of power vested under section 147 of the Act. On merit the Tribunal held that the authority erred in holding that the assessee had inserted bogus purchase into his accounts without bringing on record any evidence to hold that entire transactions were not genuine and had relied only upon the statement of one of the partner recorded on February 8, 2018, which was later retracted by all the partners on February 14, 2018 (within a short date of 6 days). This had not at all been considered by the Assessing Officer or the

Commissioner (Appeals). The Assessing Officer and the Commissioner (Appeals) did not mention this retraction statement in their order. It was the duty of the Assessing Officer to consider the letter in true perspective and to comment on it which he failed to do so. The assessment having been framed by the Assessing Officer without considering the retraction of statement filed by the assessee, the addition could not be sustained. That the acceptance by the assessee of the addition in one assessment year could not lead to a conclusion that in all these assessment years, the assessee had inserted bogus purchases in a similar way. The principle of estoppel could not be applied. The case of the assessee was to be examined in the light of evidence brought on record and in the present case, there was no evidence brought on record with regard to bogus purchase or creation of any undisclosed assets by the assessee in all these assessment years. That addition could be made only when it is shown by the evidence brought on record that the books of account are not reliable as there are material errors and omissions existed therein. There should be concrete evidence for considering the purchase entries in the books of account as bogus. In the present case, the sales and purchase shown by the assessee lead to profit and the profits declared by the assessee progressively increased from year-to-year and without any material to suggest that they were bogus it could not be said that the purchases were bogus. That once the statement recorded under section 131 or 131(1A) or 133A of the Act was retracted by the assessee, the Assessing Officer without rejecting the books of account could not make any additions towards bogus purchases. Accordingly, the additions made on the premise of bogus purchase in all these assessment years were deleted. (AY. 2012-13 to 2015-16, 2017-18)
Yashaswi Fish Meal and Oil Co. v. Dy CIT (2024) 110 ITR 530 (Bang)(Trib)

1481 **S. 138 : Disclosure of information-PM CARES Fund-Third party-Satisfaction of Principal Chief Commissioner or Chief Commissioner or Principal Commissioner or Commissioner-Provisions override Right to information-Information sought regarding exemption in respect of PM Cares Fund-Central Information Commission does not have jurisdiction to direct furnishing of information [S. 138(2), Right To Information Act, 2005, S. 8(1)(j) 11, 22, Art. 226]**

The Central Information Commission passed an order directing the Central Public Information Officer/Deputy Commissioner (E) to provide copies of all the documents submitted in the exemption application and the file notings granting the approval relating to the PM CARES Fund under the right to information application filed by the respondent. The information was denied to the respondent and the appellate authority on the ground that the information sought was exempted from disclosure under section 8(1)(j) of the Right to Information Act, 2005. On the question whether or not section 138(2) of the 1961 Act which contained a non obstante clause would override section 22 of the 2005 Act. Allowing the petition the Court held that the applicability and overriding effect of an Act over other statutes could not be decided merely by when the Act came into force and it is for the courts to discern and interpret which Act will prevail over the other. The Income-tax Act, 1961 which is a special Act governing all the provisions and laws relating to Income-tax and super-tax prevails over the Right to Information Act, 2005 which is in the nature of a general Act. The information sought for by the respondent was covered by section 138(1)(b) which specifically states that

information relating to an assessee can only be supplied subject to the satisfaction of the Principal Chief Commissioner or Chief Commissioner or Principal Commissioner or Commissioner as the case may be. Therefore, section 138(2) of the 1961 Act would prevail over section 22 of the 2005 Act. Court also held that That propriety demanded that the Central Information Commission ought to have followed the decision of the larger Bench in *G. R. RawaL v. DGIT (Inv) 2008 SCC OnLine CIC 1008* which was binding on it. On facts since the information sought for by the respondent related the PM CARES Fund which was a third party, it ought to have been heard. The Central Information Commission ought to have followed the procedure specified under section 11 of the 2005 Act, which prescribes that any information related to a third party could only be divulged after giving notice to the concerned third party, before ordering grant of information as sought for by the respondent.
CPIO/Dy. CIT (E) v. Girish Mittal (2024) 464 ITR 672/158 taxmann.com 549 (Delhi)(HC)

S. 139 : Return of income-Revised return of income-Bar of limitation-Revised return was filed after expiry of prescribed time-Tribunal directing Assessing Officer to consider assessee's claim made in revised return-Order of Tribunal is set aside by the High Court-Order of Assessing Officer confirmed by Commissioner (Appeals) is restored-Appeal of assessee is dismissed. [S. 139(5), 143(1)(a), 143(2), 254(1), Art. 136] 1482
For the Assessment Year 1989-90 the assessee filed its return of income on November 19, 1989 and later filed a revised return under section 139(5). Pursuant to the issuance of intimation dated August 27, 1991 under section 143(1)(a) the Assessing Officer issued a notice under section 143(2) for scrutiny assessment. In the course of hearing, the assessee filed another revised return on October 29, 1991 and claimed deduction of deferred revenue expenditure. The Assessing Officer treated the second revised return as non-est and completed the assessment. The Commissioner (Appeals) confirmed his order. The Tribunal held that under the scheme of the Act the assessee was entitled to make a claim, which otherwise was omitted to be claimed in the return during the course of assessment proceedings and reversed the order of the Commissioner (Appeals). On appeal,allowing the appeal of the Revenue, the Court held that under the provisions section 139(5), while the assessee was entitled to file a revised return it had to be filed within the time provided therein, i. e., at any point of time before the expiry of one year at the end of the relevant assessment year or before the completion of the assessment, whichever was earlier. On the admitted fact that the assessee had filed its second revised return on October 29, 1991 beyond the one year time limit from the end of the assessment year 1989-90, the provision could not be relaxed in any manner to accept the plea of the assessee. If the Act had stopped just with recognizing such right and has stated nothing about the time frame within which it should be done, then, the assessee's claim may stand the scrutiny of the statute. But when the Act stipulates that a particular act has to be performed within the particular time, it goes without saying that anything done beyond the time set forth in the section losses the statutory protection. Accordingly the High court set aside order of Tribunal and Order of Assessing Officer confirmed by Commissioner (Appeals) is restored. On appeal by assessee, dismissing the appeal the Court held that section 139(5) of the Act, at the relevant time, permitted the furnishing of a revised return at any time before the expiry of one year from the end

of the relevant assessment year or before the completion of the assessment, whichever was earlier. When the revised return dated October 29, 1991 was filed, it was barred by limitation in terms of section 139(5) of the Act. The Tribunal had not exercised its power under section 254 of the Act to consider the claim. Instead, the Tribunal directed the Assessing Officer to consider the assessee's claim. The Assessing Officer had no jurisdiction to consider the claim made by the assessee in the revised return filed after the time prescribed by section 139(5) for filing a revised return had already expired. Order of High Court is affirmed. (AY. 1989-90)

Shriram Investments v. CIT (2024) 468 ITR 372 / 301 Taxman 393/ 341 CTR 1/242 DTR 377 (SC)

Editorial : CIT v. Shriram Investments (2024) 468 ITR 368 (Mad)(HC), affirmed.

1483 **S. 139 : Return of income-Delay in filing return-Limitation-Delay of five months-CBDT-Period to be computed with reference to date on which return had been filed. [S. 119(2)(b), Art. 226]**

The assessee had to file his Income-tax return before March 31, 2015 but the Income-tax return was filed on August 22, 2015, and because Income-tax return was belated by about five months, an application was filed on November 15, 2021 under section 119(2)(b) of the Income-tax Act, 1961, for condonation of delay in filing the Income-tax return. The application was rejected on the ground of limitation. On a writ the Court held that the assessee's application for condonation of delay in filing the Income-tax return on August 22, 2015 was to be restored for consideration in the light of the reasons offered to explain the delay between March 31, 2015 and August 22, 2015 and with the directions to consider the application within a reasonable period from the date of receipt of a certified copy of this order. Court also observed that in the case of a delay in filing an application to condone delay in filing-returns according to the terms of Circular No. 9 of 2015 dated June 9, 2015 ([2015] 374 ITR (St.) 25) the period of six years will have to be computed with reference to the date when the belated Income-tax return is filed. Order rejecting the application was set aside. (AY. 2013-14)(SJ)

Vivek Krishnamoorthy v. PCIT (2024)469 ITR 605 (Karn)(HC)

Editorial: Affirmed by division bench, PCIT v. Vivek Krishnamoorthy (2025) 474 ITR 506/ 175 taxmann.com 681 (Karn)(HC)

1484 **S. 139 : Return of income-Condonation of delay-Reasonable cause Illness of spouse of chartered accountant-Delay is properly explained-Delay is condoned-Order of PCIT is rejecting the application is set aside. [S. 119(2)(b), Art. 226]**

The assessees were members of one family. Their accounts as also all issues in relation to their income-tax returns were handled by a Chartered Accountant, who could not take timely steps on account of ill health of his spouse. For such reason, the returns of the assessees could not be filed within the stipulated time. The assessees filed an application under section 119(2)(b) praying for condonation of delay in filing of their returns claiming that there was bonafide and a legitimate cause, requiring the delay to be condoned in filing of the returns. The assessees also submitted all the medical papers in support of their contentions that the case as made for condonation of delay was bonafide/genuine as reflected from the medical papers. The Principal Commissioner

disbelieved the assessees' case when he observed that the reasons were not genuine reasons preventing the assessees from filing income-tax returns and rejected the application. On writ the Court held that the approach of the Principal Commissioner appears to be quite mechanical, who ought to have been more sensitive to the cause which was brought before him when the assessee prayed for condonation of delay. In such context, it can never be that technicalities and rigidity of rules of law would not recognize genuine human problems of such nature, which may prevent a person from achieving such compliances. It is to cater to such situations the legislature has made a provision conferring a power to condone delay. These are all human issues and which may prevent the assessee who is otherwise diligent in filing returns, within the prescribed time. It also cannot be overlooked that any professional, for reasons which are not within the confines of human control, by sheer necessity of the situation can be kept away from the professional work and despite his best efforts, it may not be possible for him to attend the same. The reasons can be manifold like illness either of himself or his family members, as a result of which he was unable to timely discharge his professional obligation. There could also be a likelihood that for such reasons, of impossibility of any services being provided/performed for his clients when tested on acceptable materials. Such human factors necessarily require a due consideration when it comes to compliances of the time limits even under the Income-tax Act. The situation in hand is akin to what a Court would consider in legal proceedings before it, in condoning delay in filing of proceedings. In dealing with such situations, the Courts would not discard an empathetic/humane view of the matter in condoning the delay in filing legal proceedings, when law confers powers to condone the delay in the litigant pursuing Court proceedings. This of course on testing the bona fides of such plea as may be urged. Such principles which are quite paramount and jurisprudentially accepted are certainly applicable, when the assessee seeks condonation of delay in filing income tax returns, so as to remove the prejudice being caused to him, so as to regularise his returns. In fact, in this situation, to not permit an assessee to file his returns, is quite counter productive to the very object and purpose, the tax laws intend to achieve. In this view of the matter, the delay which is sufficiently explained in the instant case would be required to be condoned Resultantly, the order is quashed and set aside. The revenue is directed to permit the assessees to file returns without penalty, fees and interest, if any, within a period of two weeks. All contentions of the parties on the merits of the returns are expressly kept open.

Jyotsna M. Mehta v. PCIT (2024) 340 CTR 860 / 241 DTR 465 301 Taxman 6 (Bom)(HC)
Niti Ravi Mehta v. PCIT (2024) 340 CTR 860 / 241 DTR 465 301 Taxman 6 (Bom)(HC)
Ravi Madhusudan Mehta v. PCIT (2024) 340 CTR 860 / 241 DTR 465 301 Taxman 6 (Bom)(HC)

S. 139 : Return of income-Delay in filing of return-Deduction of tax at source-Refund-Genuine hardship-COVID-19 –Court held that genuine hardship and it should receive a liberal construction-Court held that this being a case of genuine hardship caused to assessee, delay-Order rejecting condonation of delay application is quashed. [S. 54, 119(2)(b), Art. 226] 1485

Assessee, a US resident failed to file his return for assessment years 2020-21 and 2021-22 due to COVID-19 pandemic which affected his parents and his in-laws and he could

not travel to India On returning to India, assessee realized that a large amount was deducted at source for relevant assessment years and that he was entitled to a refund. He filed an application under section 119(2)(b) seeking condonation of delay which was dismissed. Court held that assessee had filed compliant in US for theft from his car in which his passport was also lost. Further, assessee informed reason for condonation of delay before Commissioner wherein he referred to his parents and parents-in-law being affected by pandemic and death of his father-in-law in year 2021-Whether section 119(2)(b) enables CBDT to condone delay in case of genuine hardship and it should receive a liberal construction. Court held that this being a case of genuine hardship caused to assessee, delay in filing ITRs was to be condoned, order rejecting condonation of delay application is quashed. (AY. 2020-21, 2021-22) (SJ)
Shri Nivas v. CIT (IT) (2024) 298 Taxman 400 (Mad.)(HC)

1486 **S. 139 : Return of income-In valid return-Tax audit-Business of profession-Order is set aside and matter remanded to the Assessing Officer. [S. 139(9) Art. 226]**
The Assessing Officer treated the return as invalid. On writ the assessee contended that order passed under section 139(9) treating returns filed by assessee for relevant assessment year as invalid without assigning any reason whatsoever as to why returns were treated as invalid. The assessee also contended that it is It engaged in a Business and was not carrying on any Profession, and tax audit limit was 10 crore and not Rs. 50,00,000/-, which was applicable to Profession. Allowing the petition the Court held that since question/issue as to whether assessee was carrying on business or engaged in profession had neither been adverted to nor addressed in impugned order, impugned order was to be set aside and matter was to be remanded back to revenue for consideration afresh. Matter remanded. (AY. 2021-22)
Srijan Capital Advisors LLP v. ACIT (2024) 298 Taxman 495 (Karn)(HC)

1487 **S. 139 : Return of income-Invalid return-Condonation of delay-Central Board of Direct Taxes-Genuine hardship should be construed in a liberal manner-Delay is directed to be condoned. [S. 119(2)(b), 139(9) Art. 226]**
Assessee-company filed return of income in its old name, even though by that time its name had already been changed. Assessing Officer issued on assessee notice under section 139(9) asking it to rectify defects within prescribed time. As assessee did not do needful within prescribed time, its return was declared to be invalid. Assessee filed an application under section 119 seeking condonation of delay in not responding impugned notice. P Chief Commissioner rejected application. On writ the Court held that W since delay in not responding to notice was neither deliberate nor on account of culpable negligence or any mala fides and issue was only of correcting name of assessee in return, Competent Authority is directed to permit assessee to correct its name in return. (AY. 2017-18)
Optra Health (P.) Ltd. v. Addl. CIT (HQ) (2024) 297 Taxman 481 / 462 ITR 238/336 CTR 489 (Bom.)(HC)

S. 139 : Return of income –Delay in filing return-Pendency of ruling before Authority for Advance Rulings (AAR)-Genuine hardship-Delay is condoned-Directed to pay cost of Rs 50000 each petition. [S. 119(2)(b), 245R(2), Art. 226] 1488

Assessee, a Singapore based company, approached Authority for Advance Rulings (AAR) in relation to its three projects and authority provided a ruling to effect that income earned from said three projects were not taxable in India. With regard to three other projects relating to assessment years 2012-13, 2013-14 and 2014-15, respectively, assessee again approached AAR and requested for a ruling with regard to tax liability in India. After receipt of ruling that income was taxable in India, assessee filed return. Assessee filed application for condonation of delay, however same was rejected. On writ the assessee claimed that it experienced difficulty in filing returns because digital signature certificate (DSC) of one of foreign directors could not be obtained easily and eventually, returns in respect of all three assessment years were filed in March 2017. The assessee claimed that it did not file return prior to due dates on bona fide belief that application for advance ruling would be held to be not maintainable as per section 245R(2). The Court held that assessee's assertion that it could lose valuable right of requesting for an advance ruling by filing returns of income while applications were pending before AAR could not be disregarded as lacking credibility. In view of facts that applications fell within scope of expression genuine hardship in section 119(2)(b), delay in filing returns of income seeking refund were liable to be condoned. (AY. 2012-13, 2013-14)(SJ)

Tiong Woon Project & Contracting Pte. Ltd. v. CBDT (2024) 297 Taxman 434 /463 ITR 641 (Mad.)(HC)

S. 139 : Return of income-Carry forward of loss-Return is filed within time-CIT(A) is recording wrong date-The Assessing Officer is directed to carry forward the loss. [S. 139(1), 139(4), 139(5)] 1489

Held that the original return filed for the assessment year 2019-20 dated November 26, 2019 depicted that the assessee had filed the return well within the time-limit specified under Explanation 2 to section 139(1) of the Act which was November 26, 2019. The Commissioner (Appeals) by recording the wrong date of filing of the return by the assessee, i. e., February 20, 2020 for the assessment year 2019-20, erroneously held that the assessee had filed the return belatedly, which ultimately resulted in not allowing the loss claimed by the assessee for the assessment year 2019-20. On the facts, the Commissioner (Appeals) had committed error in not allowing the carry forward of losses. The Assessing officer is directed to allow the carry forward the loss as claimed by the assessee. (AY. 2020-21)

Paytm First Games P. Ltd. v. ACIT (2024)110 ITR 11 (SN)(Delhi)(Trib)

S. 139A : Permanent account number-Same number is allotted to another person-Income-tax Department was to be directed to forward a letter to CIBIL/other credit information companies informing about issuance of same PAN to assessee as well as to other person. [Art. 226] 1490

Department issued Permanent Account Number (PAN) to assessee and later on same PAN was also issued to another person who had obtained loan and was a defaulter

and, therefore, due to same PAN, CIBIL score of assessee had been affected adversely. Assessee filed the writ petition to cancel the Permanent Account Number (PAN) allotted to other person. During pendency of petition, mistake was corrected by Income-tax Department by accepting that assessee was the first allottee of the said PAN and Department cancelled the allotment of same number to the other person, which was allotted inadvertently. Allowing the petition the Court held that since ambiguity arose due to erroneously assigning the same PAN to two persons, Income-tax Department was to be directed to forward a letter to CIBIL/other credit information companies informing about issuance of same PAN to assessee as well as to other person. (SJ)
Sushil Kumar Verma v. UOI (2024) 299 Taxman 250 (MP)(HC)

1491 **S. 142(2A) : Inquiry before assessment-Special audit-Extension of time-Cannot be exercised by the Commissioner-Order of Tribunal is affirmed. [S. 142(2A)(C), 260A]**
Dismissing the appeal of the Revenue the Court held that in view of decision in case of *Pr. CIT v. Soul Space Projects Ltd. [2023] 157 taxmann.com 272 (Delhi)*, discretionary power vested in Assessing Officer to grant extension of time under proviso to section 142(2C) for submitting audit report under section 142(2A) (which was non-delegable) cannot be exercised by Commissioner. (AY. 2004-05 to 2008-09)
PCIT v. B. L. Kashyap and Sons Ltd. (2024) 297 Taxman 13 / 469 ITR 504 (Delhi)(HC)

1492 **S. 142(2A) : Inquiry before assessment-Special audit-Sufficient opportunity was afforded to assessee before sanction was granted for special audit-Writ petition is dismissed. [Art. 226]**
Dismissing the petition the Court held that the competent authority had duly applied its mind by taking into account not only response of assessee but also comments of revenue and due and sufficient opportunity was afforded to assessee before sanction was granted for special audit. On facts, there is no illegality in said approval for special audit.
Jabalpur Development Authority v. PCIT (2024) 296 Taxman 220 (MP)(HC)

1493 **S. 142 (2A): Inquiry before assessment-Special audit –Limitation-Power to extend time limit for submitting audit report lies with the assessing officer and not the Commissioner-Appeal of the Revenue is dismissed. [S. 132 142(2C), 153A, 153B, 260A]**
The assessee, engaged in the business of construction and allied services, was subjected to a search under section 132 and pursuant thereto, a special audit of the assessee's books of accounts was ordered. The Special Auditor made a request for extension of time to the Assessing Officer who forwarded the request to the Commissioner. The Commissioner granted an extension of 60 days for furnishing the audit report. The Hon'ble Delhi Tribunal held that such extension of time granted in the matter did not align with the provisions of section 142(2C) and therefore the assessment order passed by the Assessing Officer was barred by limitation. On appeal by the Department, the Hon'ble Delhi HC held that since the initial timeframe for the conduct of the audit is mandatorily required to be fixed by the Assessing Officer as per section 142(2C), the power to vary the original time frame by way of extension under the proviso appended to it has been consciously conferred by the Legislature only on the Assessing Officer

and such power being non-delegable, the same could not have been discharged by the Commissioner. (AY. 2007-08, 2008-09)
PCIT(Central) v. Soul Space Projects Ltd (2023) 157 taxmann.com 272/ (2024) 460 ITR 642/ 336 CTR 282 (Delhi) (HC)

S. 143(1) : Assessment-Intimation-Revised return filed within limitation period-Scrutiny assessment ignoring revised return not valid-Processing of return under Section 143(1)(A) not an assessment order-Penalty Not Imposable [S. 143(1)(a), 143(IA), 143(3), 260A, 271(1)(c)] 1494

Held allowing the appeal the Court held that the intimation under section 143(1)(a) having been set aside, no adjustment made under section 143(3) survived. Once the "object", i.e., the intimation stood removed, its "shadow", i. e., the consequence [which was the order u/s 143(3)] could not survive. In view of the surviving limitation to file a revised return, the assessee was within its rights to file the revised return. The assessee's return had been processed under section 143(1)(a) and the Assessing Officer had disallowed part of the interest payments claimed by the assessee and the Commissioner (Appeals) was of the view that the assessee ought to have been granted an opportunity of hearing and had accordingly, remitted the matter to the Assessing Officer to proceed afresh. The correctness of that order was not challenged by the Revenue and hence the same had attained finality. Consequently, by way of legal effect caused, the original return of the assessee became pending, at the stage of processing. One year time from the end of the assessment year 1995-96 having survived, the assessee had filed its revised return and had not been rejected by the Assessing Officer. Instead of processing the return as revised, the Assessing Officer had initiated scrutiny assessment proceedings, under section 143(3) computing the net loss. The provisions of section 143(1A), would apply and remain confined only to situations covered under section 143(1)(a). Consequently, the assessment proceedings and order passed under section 143(3) were invalid. That, on the facts involving demand of additional tax on simple processing of income, penalty being imposable for concealment of income consequent to scrutiny assessment order under section 143(3) had no application. The processing of a return under section 143(1)(a) was not an assessment order. (AY. 1995-96)
Khandelwal Rubber Products P. Ltd. v. CIT (2024)467 ITR 456/340 CTR 721 / 241 DTR 430 / 162 Taxmann.com 897 (All) (HC)

S. 143(1) : Assessment-Intimation –Disallowance provision in section 143(1)(a) (v), introduced by the Finance Act, 2021, w. e. f Ist April, 2021, dealing with deductions claimed under Chapter VI-A applies prospective. [S. 143(1)(a)(v)] 1495

Held that disallowance provision in section 143(1)(a) (v), introduced by the Finance Act, 2021, w. e. f Ist April, 2021, dealing with deductions claimed under Chapter VI-A applies prospectively (AY. 2019-20)(ITA No. dt. 22-3 2024)
Food Corporation of India Employees Co-Operative Credit Society Ltd v. ADIT,CPC (2024) BCAJ-June-P. 43 (Mum)(Trib)

1496 **S. 143(1) : Assessment-Intimation –Mandates only processing the return of income to vouch for the arithmetical error etc-Revenue cannot be allowed to go beyond-Claims not made in the return-Can proceed by filing revision application and not in appeal. [S. 37(1), 119, 264, Form No. 26AS]**

Section 143(1) mandates only processing the return of income to vouch for the arithmetical error, detect the incorrect claim of expenses, losses verify and cross check the claim made in the audit report, claim of deductions, cross verify the income declared in form 26AS or form 16A etc, and the Revenue is not allowed to go beyond that. The Tribunal also held that claims not made in the return which has been processed and where time for filing revised return has expired can be made only before the administrative officers or the Central Board of Direct Taxes and not in appeal. (AY. 2019-20) (ITA No. 1773 / Delhi /2024 dt. 19-9-2024)

Pasupati Acrylon Ltd v. ACIT (2024) BCAJ-October-P. 53 (Delhi)(Trib)

1497 **S. 143(1) : Assessment-Intimation-Prima facie adjustment-under late payment of employees' contribution towards PF and ESI-Adjustment is valid-Not allowable as deduction. [S. 36(1(va), 37(1), 143(1)(a)]**

Held that payment of employees' contribution to PF and ESI made beyond the due dates can be disallowed while processing the return under s. 143(1)(a); since the said payments were not claimed as deduction under S. 37(1) in the return nor the claim was certified by the auditor, it could not have been allowed while processing the return. Adjustment is valid. (AY. 2019-20)

Checkmate Services (P) Ltd. v. DCIT (2024) 230 TTJ 785 / 241 DTR 185 / 38 NYPTTJ 955/ 164 taxmann.com 498 (Ahd)(Trib)

1498 **S. 143(1) : Assessment-Intimation –Credit for tax deducted at source-Kachha Artiya-Mismatch in turnover stated in Form No. 26AS and gross total income (commission income) disclosed in the return-CPC has no right to reduce the credit of TDS on the ground that the assessee has not offered the entire income in her return as per Form No. 26AS-the AO is directed to grant full credit of the TDS. [S. 143(1)(a)(v), 194Q, 26AS]**

Tribunal held that as per s. 143(1)(a)(vi), the total income of the assessee can be disturbed by making adjustment by making addition of income appearing in Form No. 26AS which has not been included in the computation of income in the return of income. CPC has no right to reduce the refund claimed by the assessee on the ground of income not offered by the assessee according to Form No. 26AS. In the case of Kachha Artiya, only the commission income is required to be shown; gross sales cannot be the income of the assessee. Accordingly, the AO is directed to grant full credit of the TDS.

Manju Mithal v. CIT (A) (2024) 232 TTJ 804 / 243 DTR 145 / 38 NYPTTJ 1208 (Jodhpur) (Trib)

S. 143(1) : Assessment-Intimation –Communication for adjustment was sent at the updated email address of the assessee is valid communication-Late payment of employees contribution-Disallowance is justified-Matter is remanded to the AO to find out any extension was granted under the relevant statutes for payment of employees' contribution to ESI/ PF. [36(1)(va), 43B, 139(1), 282, R. 127(2)] 1499

Held that though the assessee alleged that the email address sanjay@markoline.com was discarded in January, 2019, no evidence or proof is brought on record that the necessary changes were made in the taxpayer profile on the IT portal prior to the aforesaid date of communication. Accordingly in view of para 6 of the Notification No. 2 of 2016, the email address sanjay@markoline.com is the primary email address for the purpose of issuing electronic communication. Therefore, the communication dt. 17th March, 2019 of the proposed adjustment under s. 143(1)(a) sent at the aforesaid email address is a valid communication. As regards late payment of employees contribution the Tribunal held that the disallowance is justified and the matter is remanded to the AO to find out any extension was granted under the relevant statutes for payment of employees' contribution to ESI/ PF. (AY. 2018-19)

ACIT v. Markolines Infra (P) Ltd. (2024) 229 TTJ 825 / 238 DTR 203 (Mum) (Trib)

S. 143(1) : Assessment-Intimation-Rectification of mistake-Pending rectification application transferred from Central Processing Centre to jurisdictional Assessing Officer-Disallowance of entire expenditure grossly without notifying of adjustment-Rejection of rectification request on ground of no mistake apparent from record is held to be not justified-Matter remitted to Jurisdictional Assessing Officer to rectify mistake and allow assessee's claim. [S. 154, Form No 10B] 1500

Held that the Central Processing Centre had grossly disallowed the entire expenditure claimed by the assessee without putting the assessee on notice of such adjustment. This unilateral act of the Revenue was not in consonance with the provisions of law and could not be held justified. The matter was remitted to the jurisdictional Assessing Officer with a direction to rectify the mistake and allow the claim of expenditure in accordance with law. (AY. 2018-19)

UP Sugar Mills Cogen Association v. Assessing Officer (2024) 115 ITR 74 (SN)(Lucknow) (Trib)

S. 143(1) : Assessment-Intimation –Prima facie adjustments-Tax Audit report showing unpaid interest-Prima facie adjustment within jurisdiction-Interest on delayed payment of value added tax-Interest not specified for deduction on actual payment basis-Disallowance is not attracted-Interest liability against delayed discharge of statutory liability is entitled to deduction-Interest-Levy of interest is mandatory. [S. 37(1) 43B(a), 139(1), 234A, 234B, 234C, Maharashtra Value Added Tax Act, 2002 S. 30] 1501

Held that the tax audit report stated that the assessee, while computing its taxable income, failed to disallow the interest payable which remained unpaid by the expiry of the time-limit prescribed under section 139(1) of the Act. Thus, the disallowance under section 43B(a) of the Act was on the basis of the return and the accompanying tax audit report. Therefore, there was no infirmity in the orders of tax authorities in carrying out the disallowance through prima facie adjustment under clause (iv) of section 143(1)

(a) of the Act. That in the absence of statutory provisions, i. e., a specific entry under section 43B(a), the interest liability incurred against delayed discharge of statutory liability was entitled to deduction under section 37(1) of the Act without being subject to disallowance under section 43B(a) of the Act. Consequently, the order confirming the disallowance of interest payable on Maharashtra Value Added Tax statutory liability under section 43B(a) of the Act is set aside, and the Assessing Officer is directed to delete the disallowance. That the levy of interest under sections 234A, 234B and 234C is mandatory. (AY. 2019-20)
Royal Drinks P. Ltd. v. ITO (2024)113 ITR 283 (Nag)(Trib)

1502 **S. 143(1) : Assessment-Intimation-Prima facie adjustment-Excise duty-Adjustment made by Assessing Officer under section 143(1) by including excise duty in turnover is not sustainable. [S. 143(1)(a), 145A]**
Assessee-company calculated tax liability on taxable income at rate of 25 per cent as per rate provided under First Schedule of Finance (No. 2) Act, 2019. It stated that turnover in financial year 2016-17 excluding excise duty was at Rs. 226.49 crores and excise duty was at Rs. 28.93 crores aggregating to Rs. 255. 42 crores only. Assessing Officer processed under section 143(1) return filed by assessee and calculated tax at rate of 30 per cent considering turnover exceeding Rs. 250 crores. CIT(A) affirmed the order of the AO. On appeal the Tribunal held that since issue whether to include excise duty or exclude excise duty from amount of turnover for determining rate of tax in pursuance to First Schedule of Finance (No. 2) Act, 2019 is a debatable issue and same could not be resolved while processing return under section 143(1), adjustment made by Assessing Officer is not sustainable. (AY. 2019-20)
Kluber Lubrication India (P.) Ltd. v. DCIT (2024) 208 ITD 470/231 TTJ 329/ 241 DTR 113 (Bang) (Trib.)

1503 **S. 143(1) : Assessment-Intimation-Prima facie adjustments-Additional ground-Appellate Tribunal-Additional ground is admitted-Assessing Officer is duty-bound to intimate either in writing or in Electronic mode before making any adjustment or disallowance to returned income-No intimation is given-Order is quashed. [S. 254(1)**
Held that the Assessing Officer before making any adjustment or disallowance to the returned income was duty-bound to intimate the assessee either in writing or in the electronic mode. However, no intimation had been given to the assessee before making the adjustment or disallowance either in writing or in electronic mode. That the Assessing Officer had not followed the mandate of the first proviso to section 143(1)(a) of the Act and consequently, the order passed under section 143(1) is quashed. (AY. 2020-21)
Onkar Society for Engineering and Technological Research v. ITO (2024) 110 ITR 393 (Kol)(Trib)

S. 143(1) : Assessment-Intimation-Appealable before Commissioner (Appeals)-Additions for ICDS and Any sum received from employees-Scrutiny assessment maintaining disallowance made under Section 143(1)-Challenged before CIT(A) against the order under section 143(3)-Failure to adjudicate additions/disallowance made under S. 143(1)-Order of CIT(A) is affirmed-For challenging an intimation the assessee should file an appeal before the First Appellate Authority under S. 246A. [S. 36(1)(va), 143(3),246A] 1504

The return of the assessee was processed with additions for ICDS adjustment and a disallowance under section 36(1)(va). Subsequently, the case was selected for scrutiny and an assessment order was passed. The Assessing Officer passed the assessment order under section 143(3) maintaining additions/disallowances made under section 143(1). Commissioner (Appeals) upheld said addition. On appeal the assessee challenged CIT(A)'s failure to adjudicate addition assessed under section 143(1). Dismissing the appeal the Tribunal held that the assessee had only challenged assessment order passed u/s. 143(3) and not intimation u/s. 143(1) before first appellate authority. Section 246A allows for an appeal against intimation under section 143(1), which assessee should have filed and since assessee did not appeal section 143(1) intimation, their ground lacked merit hence dismissed. AY. 2020-21)

Alubound Dacs India (P.) Ltd. v. DCIT (2024) 207 ITD 393/232 TTJ 547/243 DTR 195 (Mum) (Trib.)

S. 143(1) : Assessment-Intimation-Penalty-Tax auditor had categorized amount in question as penalty-Prima facie disallowable under section 143(1)(a)(iv)-AO is not required to pass a speaking order for said adjustment made in strict terms-Matter remanded the matter to the file of CIT(A) to deciding a fresh on merit. [S. 37(1), 143(1)(a)(iv)] 1505

Assessee paid certain compensation in favour of a hospital and claimed same as expenditure. Compensation was remitted for violation of patents/trademarks. Assessing Officer issued intimation calling for tax audit report. Pursuant to which it was noted by Assessing Officer under clause No. 21(a) of Form 3CD that certain amount was listed under entry of expenditure by way of penalty or fine for violation of law. Assessing Officer proposed adjustment for said amount on ground that same was not disallowed by assessee while filing return. Thereafter, adjustment was made under section 143(1). CIT(A) affirmed the order of Assessing Officer. On appeal the Assessee contended that Assessing Officer failed to pass speaking order. Tribunal held that the adjustment was made on basis of entry made by tax auditor of assessee and omission noticed in returned income by Assessing Officer and the Assessing Officer communicated proposed adjustment and thereafter, passed intimation order along with reasons of adjustment duly specified as part of intimation order. Tribunal held that under intimation authority of Assessing Officer is limited to carry out adjustment based on return of income and document provided, since tax auditor had categorized said amount as penalty, amount was prima facie disallowable under section 143(1)(a)(iv) and thus, Assessing Officer was not required to pass a speaking order for said adjustment made in strict terms. However as claim of assessee that said expenditure was not for any purpose which was an offence or prohibited by law was not examined by Commissioner (Appeals), it was appropriate to restore this issue back to file of Commissioner (Appeals) for deciding afresh on merit of addition. (AY. 2019-20)

Joyo Plastics v. ACIT (2024) 207 ITD 598 / 231 TTJ 918/242 DTR 225 (Mum) (Trib.)

1506 **S. 143(1) : Assessment-Intimation-Deduction only on actual payment-Goods and Services Tax-Return filed after extended time-Prima facie adjustment based on Tax audit report-Payment to extent made after due date for filing return can only be disallowed-Matter remanded to the file of CIT(A). [S. 43B, 139(1), 139(4)]**

Held, that the assessee had filed its return after the expiry of the extended due date wherein a claim against goods and services tax liability was made. This by provisions of section 43B of the Act was subject matter of actual payment any time before expiry of the extended due date failing which the Assessing Officer disallowed the claim for deduction under section 43B of the Act on the basis of the tax audit report under section 143(1)(a) of the Act. However, the first appellate authority perfunctorily confirmed the disallowance on the basis of delayed filing of the goods and services tax return without vouching the exact amount of goods and services tax discharged by the extended due date, i. e., October 30, 2019 and confirming the disallowance under section 43B of the Act for the balance amount of goods and services tax paid beyond such extended due date. The matter was to be remanded to the appellate authority with a direction to deal with this limited issue in accordance with law. (AY. 2019-20)

Sharp Aluminium v. Asst. CIT (2024) 109 ITR 19 (SN)(Pune) (Trib)

1507 **S. 143(1) : Assessment-Intimation –Prima facie adjustment-Inclusion of excise duty in the turnover for determining rate of tax-The adjustment made while processing the return is not sustainable. [S. 44AB, 143(1)(a), 145A]**

Held that while issuing guidance note on tax audit report under s. 44AB, ICAI has clarified that if the assessee is following inclusive method of accounting, then the excise duty should be part of the turnover, and vice versa if the assessee is following exclusive method of accounting i. e., that the taxes such as GST, Excise duty, etc. collected from customers on behalf of Government is shown under separate account and payment of the taxes to Government is debited in such separate account, then the value of taxes should be excluded from the turnover. In the present case, the assessee has claimed to have maintained accounts using exclusive method of accounting which is not disputed by the Revenue. The ICAI does not mandate to include the excise in the amount of turnover as alleged by the Revenue. The adjustment made while processing the return is not sustainable. (AY. 2019-20)

Kluber Lubrication India (P) Ltd. v. DCIT (2024) 231 TTJ 329 / 241 DTR 113 / 38 NYPTTJ 990 (Bang)(Trib)

1508 **S. 143(1) : Assessment-Intimation –Failure to file Form No 10B-Adjustment is justified-Disallowance of expenditure-Revenue is directed to intimate the exact reason for disallowing the claim of the assessee while processing the return-The assessee may file an application under S. 154 to rectify the mistake in the intimation, as deemed proper-Assessee is also free to avail the remedy under s. 119 if it so desires. [S. 10(23C), 11, 119, 154, 250(5)]**

Tribunal held that claim for deduction under s. 11 was not made in the return of income Assessee claimed deduction under s. 10(23C) in the return without furnishing the Form No. 10B. The adjustment as made by the CPC while processing the return is justified. The Tribunal has directed the Revenue to intimate the exact reason for

disallowing the claim of the assessee while processing the return; thereafter, the assessee may file an application under s. 154 to rectify the mistake in the intimation, as deemed proper. The Tribunal also directed the assesse to avail the remedy under s. 119 if it so desires (AY. 2022-23)
Shri R. V. Shah Charitable Trust v. Dy. CIT (2024) 230 TTJ 106 / 237 DTR 225 / 161 taxmann.com 810 (Ahd) (Trib)

S. 143(2) : Assessment-Notice –Assessing Officer, ITO Ward-5(3), Kolkata issued a notice under section 143(2)-Assessing Officer, ITO Ward-9(2), Kolkata completed assessment without issuing notice under section 143(2) –Additional ground-Order is bad in law –Tax effect is less than 1, 50,0000-SLP of revenue is dismissed as failure to explain the delay of 477 days. [S. 143(3), Art. 136] 1509
Assessee raised additional ground before Tribunal challenging jurisdiction of Assessing Officer. Tribunal held that passing of assessment order under section 143(3), without issuing notice under section 143(2) is bad in law and. On appeal the Revenue contended that legal issue was not raised by assessee at earliest point of time namely, before Assessing Officer nor before Commissioner (Appeals). High Court held that assessee could not be prevented from raising question of jurisdiction which is an issue which goes to root of matter and, Tribunal had rightly permitted assessee to canvas issue and also rightly concluded that assessment was bad in law. SLP filed by revenue against order of High Court is dismissed as the Revenue could not explain the delay of 477 days and also Tax effect is less than 1,50,0000. (AY. 2011-12)
PCIT v. Weedo Ventures (P.) Ltd. (2024) 301 Taxman 624 (SC)
Editorial : PCIT v. Weedo Ventures (P.) Ltd. (2024) 167 taxmann.com 614 (Cal)(HC)

S. 143(2): Assessment-Notice-Issuance of notice under S. 143(2)-Assistant / Deputy Commissioner of Income Tax (IT) is authorized as prescribed income-tax authority to issue the notice-Notice is valid. [Art. 226, R. 12E] 1510
Upon a challenge to the issuance of a notice under section 143(2) on the ground that the same was issued by an officer who was not a prescribed income tax authority, the Hon'ble Delhi High Court observed that a plain reading of section 143(2) along with CBDT's Notification in exercise of powers under Rule 12E indicated that either of two authorities being Assistant or Deputy Commissioner of Income Tax (International Taxation) had the authority to issue the notice. Accordingly, the validity of the impugned notice was upheld and the petition was dismissed. (AY. 2023-24)
Ambience Pvt. Ltd. v. ACIT (2024) 341 CTR 313 / 167 taxmann.com 596 /301 Taxman 491 (Delhi)(HC)

S. 143(2) : Assessment-Notice –Assessing Officer, ITO Ward-5(3), Kolkata issued a notice under section 143(2)-Assessing Officer, ITO Ward-9(2), Kolkata completed assessment without issuing notice under section 143(2) –Additional ground-Order is bad in law –Order of Tribunal is affirmed. [S. 143(3), 260A] 1511
Assessee raised additional ground before Tribunal challenging jurisdiction of Assessing Officer. Tribunal held that passing of assessment order under section 143(3), without issuing notice under section 143(2) is bad in law and. On appeal the Revenue contended

that legal issue was not raised by assessee at earliest point of time namely, before Assessing Officer nor before Commissioner (Appeals). High Court held that assessee could not be prevented from raising question of jurisdiction which is an issue which goes to root of matter and, Tribunal had rightly permitted assessee to canvas issue and also rightly concluded that assessment was bad in law. Order of Tribunal is affirmed. (AY. 2011-12)

PCIT v. Weedo Ventures (P.) Ltd. (2024)167 taxmann.com 614(Cal)(HC)

Editorial : PCIT v. Weedo Ventures (P.) Ltd. (2024) 301 Taxman 624 (SC). SLP of revenue is dismissed as failure to explain the delay of 477 days and also Tax effect is less than 1,50,0000.

1512 **S. 143(2) : Assessment-Notice-Assessment quashed on the ground that instructions issued by CBDT for selection of cases for scrutiny were not satisfied -High Court confirmed the Tribunal order. [S. 119, 144]**

The Assessing Officer passed the assessment and made certain disallowances. The Tribunal noted that there was no disallowance of Rs. 5 lakhs or more pending in appeal and no finding to effect was available that an identical issue had arisen in the current year. The Tribunal thus quashed notice under section 143(2) and scrutiny assessment framed on the ground that instructions issued by CBDT for the selection of cases for scrutiny were not satisfied in the instant case. The High Court held that since instructions issued by CBDT had not been complied with, the Tribunal had rightly quashed the notice under section 143(2) and scrutiny assessment. (AY. 2006-07)

CIT v. Crystal Phosphates Ltd. [2023] 152 taxmann.com 232/ [2024] 461 ITR 289 (P&H HC)

1513 **S. 143(2): Assessment-Notice-Defective return –Date of filing of original return under section 139(1) was to be considered for purpose of computing period of limitation under sections 143(2) and 142(1), and not date on which defects came to be removed under section 139(9)-Notice is quashed. [S. 143(2), 139(1), 139(9)]**

Assessee filed return on 14.10.2016. Notice u/s. 139(9) of the Act issued to the Assessee on 06.02.2017. Assessee cured defects on 18.02.2017. Subsequently, again, 2nd Defective Notice u/s. 139(9) of the Act issued to the Assessee on 10.07.2017. Assessee cured defects on 20.07.2017. Notice u/s. 143(2) of the Act was issued on 11.08.2018 and Notice u/s. 142(1) of the Act was issued on 31. 08. 2018. As per Section 143(2) as amended by the Finance Act, 2016, Notice u/s 143(2) of the Act could have been issued within 6 months from the end of the financial year in which the return of income is filed. The High Court held that the time limit should be reckoned from the date of filing the return u/s. 139(1) and not the date of curing defects u/s. 139(9). Thus, in the instant case, the due date was 30. 09. 2017, being within 6 months from the end of the FY in which the return is filed (i. e. from 31.03.2017, being the end of FY-from 139(1) date 14.10.2016). Thus, Notice u/s. 143(2) of the Act dated 11.08.2018 was held to be time barred and consequently, Notice u/s. 142(1) of the Act dated 31.08.2018 shall also collapse. (AY. 2016-17)

SMC Comtrade Ltd. v. ACIT (2024) 296 Taxman 214/ 336 CTR 609 (Delhi) (HC)

S. 143(2): Assessment-Notice-Shifting of residence from Delhi to Gurgaon-Change is reflected in the return filed-Notice issued by the Assessing Officer from Delhi is without jurisdiction-Quashed-Additional ground-Jurisdictional issue-Admitted [S. 254(1)] 1514

Tribunal admitted the additional ground raised by the Assessee challenging the jurisdiction of the AO in issuing notice under s. 143(2) goes to the root of the matter. On facts, the Assessee has informed the shifting of residence from Delhi to Gurgaon, and the change is reflected in the return filed. The notice issued by the Assessing Officer from Delhi is without jurisdiction, hence quashed. (AY. 2015-16)

Ekta Gupta (Ms) v. ITO (2024) 230 TTJ 398 / 238 DTR 289 (Delhi)(Trib)

S. 143(2): Assessment-Notice-Reassessment-Notice issued beyond time prescribed-Order is null and void. [S. 139(4), 147, 148] 1515

The first notice dated 20th Feb., 2011 under S 143(2) was issued when no return of income was available on record and therefore, the said notice cannot be said to have been issued to verify whether the Assessee has understated the income or has computed excessive loss or underpaid the taxes in any manner hence cannot be considered as valid notice. Return which was filed on 31st March 2011, the time-limit for issuance of notice under S. 143(2) as per the proviso to cl. (ii) was available only till 30th Sept., 2011. Second notice under s. 143(2) was issued on 17th Oct., 2011, i. e., beyond the time-limit prescribed under the provisions of s. 143(2). Therefore, the second notice is also invalid as per the provisions of S. 143(2). Since the assessee did not furnish its return of income within the time allowed under S. 139(1), as per S. 139(4), the assessee had time till 31st March 2011, to furnish its return of income, i. e., one year from the end of the relevant assessment year 2009-10. Accordingly, the return of income filed by the assessee on 31st March 2011, is within the time allowed under the Act. The requirement of issuance of a valid notice under S. 143(2) cannot be dispensed with. Since no valid notice under S 143(2) was issued by the AO and the assessment was completed without following the mandatory requirement, the entire assessment proceedings concluded under S. 143(3)/ 147 are null and void, hence quashed. (AY. 2009-10)

U. S. Roofs Ltd. v. ACIT (2024) 227 TTJ 989 / 234 DTR 183 (Mum)(Trib)

S. 143(2): Assessment-Notice –Additional ground-Notice issued by Assessing Officer not having required Jurisdiction-Assessment order is quashed. [S. 143(3)] 1516

Held that the Income-tax Officer who issued the jurisdictional notice under section 143(2) did not have the requisite jurisdiction and lacked the authority to conduct the assessment. Hence, the assessment order is quashed. (AY. 2014-15)

Monarch And Qureshi Builders v. Asst. CIT (2024) 110 ITR 76 (Mum)(Trib)

S. 143(2): Assessment-Notice –Cash credits-Reassessment-Failure to issue statutory notice-Order is bad in law-Not curable defects. [S. 68, 143(3), 147, 148, 292BB] 1517

The assessee has not filed the return of income. Cash was deposited in the bank on various dates. Cash of a certain amount was deposited in the bank account of the assessee on various dates throughout the financial year. The assessment was reopened

by issuing a notice u/s 148. In response to the notice, the assessee filed the return. The assessment was completed by the Assessing Officer by making certain additions. On appeal, the CIT(A) affirmed the order of the AO. On appeal, the Tribunal held that the Assessing Officer had not issued a statutory notice under section 143(2) in response to a return filed under section 148. Tribunal held that non-issue of statutory notice under section 143(2) invalidated the entire proceedings and said defect was an incurable defect and also beyond the scope of section 292BB, and, therefore, the assessment order is held to be bad in law. (AY. 2010-11)
Ashish Sharma v. ITO (2024) 207 ITD 386 (Amritsar) (Trib.)

1518 **S. 143(2): Assessment-Notice-Defective return-Limitation-limitation for issuing notice for assuming jurisdiction to frame assessment will run from the year in which return of income was filed-Not when defect under section 139(9) is removed-Order is quashed and set aside. [S. 139(9), 143(3), 153]**
Assessee filed the return of income within the prescribed due date on 28-10-2017. Assessing Officer issued on assessee a defective notice under section 139(9) on 6-6-2018. Assessee cured the defect on 19-9-2018. Assessing Officer issued on assessee a notice under section 143(2) on 22-9-2019 for assuming jurisdiction to initiate assessment proceedings and framed an assessment. On appeal, the assessee contended that the notice issued is beyond the period of limitation and hence the assessment is barred by limitation. CIT(A) upheld the assessment order. On appeal, the Tribunal held that for assuming jurisdiction to frame assessment will run from the year in which the return of income was filed and not when the defect under section 139(9) was removed. The order is quashed and set aside. (AY. 2017-18)
Aark Infosoft (P.) Ltd. v. ACIT (2024) 206 ITD 354/229 TTJ 550 (Ahd) (Trib.)

1519 **S. 143(3): Assessment-Rejection of books of account-Business Expenditure SLP against dismissal of writ petition is dismissed-Clarified that in the event the assessee filed an appeal, the Commissioner (Appeals) shall examine all issues and contentions on the merits without being influenced by any of the observations made by the High Court. [S. 40(a)(ia), 144B, 145, 194C, 270A, Art. 136]**
On a writ petition against the assessment order passed under section 143(3) of the Income-tax Act, 1961, read with section 144B thereof, contending that the assessee had not been placed on notice of the intent of the Assessing Officer to reject the books of account and to make additions referable to section 40(a)(ia) of the Act, the High Court found that in the show-cause notice, the Assessing Officer had placed the assessee on notice with respect to the doubts relating to the correctness and completeness of the accounts of the assessee and the proposal to reject the books of account. The High Court dismissed the writ petition. SLP of the assessee is dismissed, but clarified that in the event the assessee filed an appeal, the Commissioner (Appeals) shall examine all issues and contentions on the merits without being influenced by any of the observations made by the High Court. (AY. 2022-23)
Pashupati Road Carrier Pvt. Ltd. v. Assessment Unit ID (2024)468 ITR 17/ (2025) 302 Taxman 185 (SC)
Editorial: Pashupati Road Carrier Pvt. Ltd. v Assessment Unit, ID. (2024)468 ITR 11 / 168 taxmann.com 702 (Delhi)(HC)

S. 143(3) : Assessment-Assessment order without DIN (Document identification number) has not valid in law-Statutory defects in the assessment order cannot be cured by applying the provision of section 292B of the Act-Circular No 19 of 2019 dated 14-8-209 (2019) 416 ITR 140 (St) of CBDT is binding on the Revenue-Order of Tribunal quashing the assessment order was affirmed-On SLP, interim stay of order dated 20-3-2-2023 as well as order of the ITAT dated 19-9-2022, until further orders. [S. 144C, 147, 292B, Art. 136] 1520

Assessment order passed by the Assessing Officer did not bear any DIN and there was nothing on record to show that there were exceptional circumstances as mentioned in 2019, Circular No 19 of 2019 dated 14-8-209 (2019) 416 ITR 140 (St) which would sustain communication of final assessment order manually without DIN, failure to allocate DIN would not be an error which could be corrected by taking recourse to section 292B and impugned final order could not be sustained. Court held that the object and purpose of issuance of 2019 Circular was to create an audit trail, thus, communication related to assessments, appeals, orders without DIN (document identification number) would have no standing in law. Order of Tribunal quashing the assessment order was affirmed. On SLP interim stay of order dated 20-3-2-2023 as well as order of the ITAT dated 19-9-2022, until further orders. (AY. 2011-12)

CIT v. Brandix Mauritius Holdings Ltd. (2024) 297 Taxman 228 (SC)

Editorial : CIT (IT) v. Brandix Mauritius Holdings Ltd. (2023) 456 ITR 34/ 293 Taxman 385 / 332 CTR 221/ 224 DTR 361 (Delhi)(HC)

S. 143(3): Assessment-Corporate insolvency resolution plan was approved by National Company Law Tribunal on 14-10-2022 which provided that no person shall be entitled to initiate any proceedings against assessee in relation to claims so long such result to a period prior to effective date of resolution plan, i. e., 10-11-2022-Notice issued under section 143(2) to assessee for A. Y. 2022-23 is bad in law and quashed. [S. 142, 143(2), Insolvency and Bankruptcy Code, 2016, S. 14, Art. 226]] 1521

Pursuant to the Corporate Insolvency Resolution Process (CIRP) of UGSL under the provisions of the Insolvency and Bankruptcy Code, 2016 (the Code), 100% shareholding of Uttam Galva Steels Pvt Ltd was acquired by AM Mining India Pvt. Ltd. (Resolution Applicant), and thereafter the name of UGSL was changed to the present name, i. e., AMNS Khopoli Limited. Assessing Officer issued a notice under section 143(2) dated 31-3-2023 informing it that the income tax return for assessment year 2022-23 had been selected for scrutiny assessment, and this was followed by three notices issued under section 142(1). The Assessee filed writ before the High Court, the court held that since resolution plan approved by National Company Law Tribunal on 14-10-2022, expressively provided that no person shall be entitled to initiate any proceedings or inquiry, assessment, enforce any claim or continue any proceedings against assessee in relation to claims so long such result to a period prior to effective date of resolution plan, i.e., 10-11-2022, notices issued by Assessing Officer were bad in law and set aside. (AY. 2022-23)

AMNS Khopoli Ltd. v. ACIT (2024) 471 ITR 571 / 164 taxmann.com 187 (Bom) (HC)

1522 **S. 143(3): Assessment-Principle of natural justice-Order passed without giving an opportunity of hearing is set aside. [S. 142(1), Art. 226]**
On writ, the Court held that the Order passed without giving an opportunity of hearing is set aside and directed to pass the order in accordance with law. (AY. 2017-18) (SJ)
Kulumepalya Lenkegowda Shivakumar v. ITO (2024)471 ITR 459 (Karn) (HC)

1523 **S. 143(3): Assessment-Capital gains - Penny stock - Sham transactions-Statement of third parties used against the assessee-No opportunity of cross examination is given-Assessment order is set aside and matter remanded for reconsideration. [S. 10(38) 45, 112A, Art. 226]**
Allowing the petition, the Court held that statements of third parties cannot be used against the Assessee without giving an opportunity for cross-examination. The assessment order was set aside, and the matter remanded for reconsideration. (AY. 2018-19) (SJ)
Naresh Sangeetha v. ITO (2024)471 ITR 515 (Mad) (HC)

1524 **S. 143(3): Assessment-Notice is sent to wrong email-Order is set aside-The Assessing Officer is directed to pass an order after giving a reasonable opportunity of hearing. [S. 156, Art. 226]**
On writ, the Court held that the notice of hearing was sent to the wrong email and the assessee was unable to respond. The order was set aside. The Assessing Officer was directed to pass the order by giving a reasonable opportunity of hearing.
Jyoti Narang v. ITO (2024) 471 ITR 66 (Delhi)(HC).

1525 **S. 143(3): Assessment-Limited scrutiny –Assessing Officer had initially issued notice under section 143(2) for a limited scrutiny on three aspects-Assessing Officer could not have expanded the scope of scrutiny without obtaining approval for a complete scrutiny from the appropriate authority. [S. 119, 143(2), 260A]**
The assessment was selected for limited scrutiny. Assessing Officer expanded the scope of scrutiny and commenced certain enquiries. However, the order granting approval for complete scrutiny was passed much after the enquiry was commenced by the Assessing Officer. Tribunal referred Instruction No. 5 of 2016, dated 14-7-2016 and held that such action of the Assessing Officer was impermissible. On appeal, the Court held that only upon conversion of the case to complete scrutiny after following the procedure as outlined in the CBDT Instruction, the Assessing Officer could examine additional issues besides the issue(s) involved in limited scrutiny. The order of the Tribunal is affirmed. (AY. 2015-16)
PCIT v. Sukhdham Infrastructures LLP (2024)470 ITR 179 / 165 taxmann.com 84 (Cal) (HC)

1526 **143(3): Assessment-Unexplained expenditure-Purchase of bullion/jewellery-Question of fact-Writ petition is dismissed. [S. 69C, 144B, Central Goods and Service Tax Rules, 2017, Notification No. 12 of 2018 (Central Tax (2018) GSTR (St)1, Art. 226]**
Assessee had purchased a huge quantum of bullion/jewellery from three sellers, namely Shiv Sahai, Diamond and Surana, for a sum of Rs. 234. 15 crores. It had also paid

commission to foreign and local agents for procuring buyers. The Assessing Officer had disallowed expenses on the ground that the assessee could not produce any documentary proof to prove the genuineness of said expenses. Assessee had filed a writ petition challenging the order passed by the Assessing Officer. Dismissing the petition, the Court held that a disputed question of fact cannot be adjudicated in writ proceedings. (AY. 2021-22) (SJ)
Mundhra Exim (P.) Ltd. v. NFAC (2024) 470 ITR 691 /159 taxmann.com 682 (Mad) (HC)

S. 143(3): Assessment order passed without giving an adequate opportunity of being heard-Order is not valid - The Assessing Officer is directed to pass an appropriate order as per law. [Art. 226] 1527
The assessment order is passed without giving an opportunity for a personal hearing. On writ, the Court held that the reason furnished for non-issuance of the show-cause notice, as articulated in the counter-affidavit, was that the assessee was indulging in deliberate procrastination. There had been an infraction of principles of natural justice. Therefore, the order of assessment is not valid. The AO is directed to pass an appropriate order as per law. (AY. 2018-19)
Shyam Communication Systems v. Dy. CIT (2024)470 ITR 25 (Delhi) (HC)

S. 143(3): Assessment-Natural justice-24 hours to respond notice-No adequate opportunity to respond to notice-Assessment order is quashed and set aside-Matter remanded. [S. 144B, Art. 226] 1528
On writ, the assessee challenged the assessment order on the ground that no adequate opportunity was given to respond to the notice. Allowing the petition, the Court held that just 24 hours' time was given for the assessee to respond to the show-cause notice-cum-draft assessment order. Since the time given for responding to the show-cause notice–cum draft assessment order was very short, and more particularly, when the notice was sent in the night, which could not have been noticed by the assessee, in the facts and circumstances of the case, the assessment orders had to be quashed. Matter remanded to the Assessing Officer. (AY. 2013-14)
Spartek Ceramics India Ltd. v. Add. CIT (2024) 469 ITR 584 (AP)(HC)

S. 143(3): Assessment –Service of notice-Writ-Territorial jurisdiction of High Court-Place of business and registered office vis-a-vis service of notice-Notice is served on the assessee, whose registered office is within the territorial jurisdiction of this Court, and who has received the notice at Mumbai-Part of the cause of action, in terms of cl. (2) of Art. 226 of the Constitution of India has arisen within the territorial jurisdiction of this Court, which entitles the assessee to approach this Court invoking its jurisdiction under Art. 226 of the Constitution, with a grievance of breach of its legal and constitutional rights. [Art. 226] 1529
Respondent No. 1 is based in Hyderabad in the State of Telangana. The Notice is issued to the assessee, which is a non-existent company, the same is served on the assessee, whose registered office is within the territorial jurisdiction of this Court, and who has received the notice at Mumbai. It is the assessee who is required to defend such notice as served on it at Mumbai. The assessee is an assessee within the jurisdiction of the

tax authorities at Mumbai. In this situation, certainly a part of the cause of action, in terms of cl. (2) of Art. 226 of the Constitution of India has arisen within the territorial jurisdiction of this Court, which entitles the assessee to approach this Court invoking its jurisdiction under Art. 226 of the Constitution, with a grievance of breach of its legal and constitutional rights.

Teleperformance Global Services (P) Ltd. v. Asstt. CIT (2021) 322 CTR 734 /201 DTR 161 (Bom)(HC) (AY. 2017-18)

Uber India Systems (P) LTD. v. ACIT (2024) 168 taxmann.com 200/ 341 CTR 442 / 243 DTR 425 /8 NYPCTR 1385 (Bom)(HC)

1530 **S. 143(3): Assessment-Rejection of books of account - Business Expenditure - Deduction of tax at source-Failure to substantiate expenditure with documentary evidence-Assessment of income at 12 Per Cent-On total disclosed revenue based on material available on record brought to knowledge of Assessee in notice-Writ petition is dismissed-All contentions of assessee are left open to be raised before Appellate Authority. [S. 40(a)(ia), 144B, 194C, 270A, Art. 226]**

Dismissing the petition, the Court held that the Assessing Officer brought to the notice of the assessee with respect to his doubts relating to the correctness and completeness of the accounts of the assessee. The Assessing Officer had observed that since the expenditure claimed was not verifiable, income was proposed to be assessed at 12 per cent. of the total disclosed revenue after rejecting the books of account under section 145(3). Therefore, the submission that the assessee had not been apprised of the proposed rejection of books and variation in income was unsustainable. In the absence of documentary evidence, there was no other option but to complete the assessment on the basis of material available on record. That with regard to the disallowance under section 40(a)(ia), the Assessing Officer had stated in the assessment order under section 143(3) read with section 144B that the assessee had not furnished the method of payment either by way of cash or through banking channel and copy of ledger of confirmation or any bills or vouchers on sample basis, that had made huge payments to non-GST entities and had also not furnished copy of ledger of confirmation but had only furnished the name, permanent account number, lorry number, amount and date only, that the assessee had not furnished documentary evidences in support of expenses, that the assessee had shown direct expenses, i. e., carriage inward and other expenses which was 92 per cent. of the total revenue from operation, that in such circumstances, expenses incurred by the assessee was not verifiable and could not be accepted that the expenses shown by the assessee to entities was genuine or reliable, and that since the books of account was also not reliable, the income was assessed at 12 per cent. of total revenue from operation after rejecting the books of account under section 145(3). It was manifest from the assessment order that no specific disallowance under section 40(a)(ia) nor any additions on that account had been made. All that the Assessing Officer had observed was that the disallowance was not being made at that stage subject to the view that any appellate authority would take with respect to rejection of books of account under section 145(3). Therefore, there was no merit in the challenge. All contentions of assessee is left open to be raised before Appellate Authority (AY. 2022-23)

Pashupati Road Carrier Pvt. Ltd. v. Assessment Unit, ID. (2024)468 ITR 11 (Delhi)(HC)

Editorial : SLP of assessee dismissed, Pashupati Road Carrier Pvt. Ltd. v. Assessment Unit, ID. (2024) 468 ITR 17 (SC)

S. 143(3): Assessment-Income above 30 lakhs-Validity of notice issued u/s 143(2)-Instruction of CBDT 1 of 2011-Defective notice-Notice and proceedings invalid. [S. 119, 143(2)] 1531

Dismissing the appeal the Court held that the Tribunal had, on the facts, rendered a finding that on the date when the assessee's case was selected for scrutiny assessment under section 143(3), the authority who issued the notice, namely, the ITO did not have jurisdiction and the jurisdiction was with the Deputy Commissioner. The Tribunal had rightly quashed the scrutiny proceedings as the defect in issuance of notice under section 143(2) was incurable since it went to the root of the matter Based on the Central Board of Direct Taxes Instruction No. 1 of 2011 which revised the monetary limit for issuing notice by ITOs, Deputy Commissioners and Assistant Commissioners stating that in cases of corporates in metro cities declaring income above Rs. 30 lakhs, the jurisdiction of such corporate assessees would lie with the Deputy Commissioners or Assistant Commissioners, held that the notice issued under section 143(2) of the Income-tax Act, 1961 by the ITO of the Ward for scrutiny assessment under section 143(3) for the assessment year 2012-13 was without jurisdiction. (AY. 2012-13)

PCIT v. Shree Shoppers Ltd. (2024)468 ITR 18 (Cal)(HC)

S. 143(3): Assessment-Transfer pricing-Arm's length price International Transactions-Limitation-Service of notice-Order of Transfer Pricing Officer is not signed digitally or manually before limitation Circular dated February 2018 (2018) 401 ITR (St) 176-Order is not valid. [S. 92C, 119, 144C, Art. 226] 1532

On writ the Court held that despite recognising, confirming and affirming that the Transfer Pricing Officer's order was not signed either physically or digitally on July 31, 2021, the Transfer Pricing Officer had signed the order physically only subsequently on August 12, 2021 and it was this manually or physically signed copy that was uploaded on the Income-tax Business Application portal on August 16, 2021, thereby leading to the sole inference that as on the last date of limitation, i. e., July 31, 2021, a legally valid Transfer Pricing Officer's order had not been passed by the Transfer Pricing Officer. Thus, the order is quashed. It is mandatory for the Transfer Pricing Officer's order to be digitally signed in terms of the Central Board of Direct Taxes circular dated February 12, 2018 ([2018] 401 ITR (St.) 176) read with section 282A of the Income-tax Act, 1961 (AY. 2018-19)(SJ)

Toyota Tausho India Pvt. Ltd. v. Dy. CIT (TP) (2024)468 ITR 29 (Karn)(HC)

S. 143 (3): Assessment-Merger-Assessment order in the name of transferor company is quashed and set aside. [S. 148, Art. 226] 1533

Assessee-company (transferor company) stood merged with another company (transferee company) with effect from 1-4-2012 Assessing Officer issued on assessee-company a notice under section 148 on 31-3-2021 and passed assessment orders dated 31-3-2022 for assessment years 2013-14 and 2016-17. On writ the Court held that it was incumbent on part of transferee company to have included tax liability of assessee-company in view of

merger with effect from 1-4-2012 and if this was not done, it was for Assessing Officer to proceed against transferee company and not against assessee-company. Accordingly the Assessment Orders passed against assessee is quashed and set aside. (AY. 2013-14, 2016-17)
SPB Papers Ltd. v. ITO, NFAC (2024) 300 Taxman 554 (Mad.)(HC)

1534 **S. 143(3): Assessment-Cash credits –Principle of natural justice-Personal hearing is not granted though video conference-In view of Circular dated 6-9-2019 where personal hearing was not technically possible through video conference, then personal hearing ought to be conducted in a designated area in Income-tax office-Matter remanded back to Assessing Officer to give opportunity of hearing to assessee. [S. 68, 263, Art. 226]**
The assessment was completed under section 143(3) of the Act. Commissioner passed the revision order and the order was set aside. Assessee requested JAO for personal hearing. However, revenue denied same on ground that personal hearing through video conferencing was not possible. Assessment order was passed without providing an opportunity to assessee and additions were made under section 68. On writ allowing the petition the Court held that in view of Circular dated 6-9-2019 where personal hearing was not technically possible through video conference, then personal hearing ought to be conducted in a designated area in Income-tax office. Accordingly the order is set aside and matter is remanded back to Assessing Officer to give opportunity of hearing to assessee. Circular No. 27/2019, dated 26-9-2019 and Circular No. F. No. 225/97/2021/ITA-II, dated 6-9-2021. Followed, *Whirpool Corporation v. Registrar of Trade Marks, Mumbai (1998) 8 SCC 1* (AY. 2018-19)
Fusion Granito (P.) Ltd. v. Asst. CIT (2024) 300 Taxman 1 (Guj.)(HC)

1535 **S. 143(3): Assessment-Income from undisclosed sources-Investment in immovable property-Books of account-Matter is remanded to the Assessing Officer-Failure to comply with notices, directed to pay cost of Rs. 10000, to the Adyar Cancer Institute Chennai-Addition on the basis of stamp valuation is affirmed. [S. 56(2) (viib), 56(2) (x) (b)(B), 69A, Art. 226]**
Assessee did not file return of income claiming that her income was below exemption limit. She had purchased an immovable property. Assessing Officer issued notice under section 148A(b) and made addition of purchase consideration under section 69A. On writ the Assessee contended that immovable property was purchased from funds provided by her husband directly to vendor. However, assessee did not submit return of income of her husband or ledger account, if any, relating to purchase of said property. Court held that if husband of assessee duly declared said income and paid applicable taxes thereon, grave injustice would be caused inasmuch as same income would be subjected to tax in hands of two persons accordingly the assessment order is set aside and matter was to be remanded to AO. For failure to comply with notices, the petitioner is directed to pay cost of Rs. 10000, to the Adyar Cancer Institute Chennai. As regards other addition on the basis of stamp valuation is affirmed. (AY. 2019-20) (SJ)
R. Chitra (Mrs) v. NFAC (2024) 340 CTR 257 / 240 DTR 505 / 164 Taxmann.com 134 (Mad)(HC)

S. 143(3): Assessment-Alternative remedy-Writ-Disputed question of fact cannot be adjudicated in writ petition-Remedy open to the assessee is to approach the appellate forum-Order of single judge dismissing the writ is affirmed. [S. 250, 154(1) Art. 226] 1536
Assessee filed the writ petition challenging the assessment order. The assessee also filed an appeal before the CIT(A). First appellate Authority dismissed the appeal. Dismissing the petition. The single judge held that disputed question of fact cannot be adjudicated in writ petition. Remedy open to the assessee is to approach the Tribunal. On appeal division bench of High Court affirmed the order of the single judge. (AY. 2017-18)
Sayed Muhammed M. v. CIT (A) (2024) 340 CTR 511 / 237 DTR 540 (Ker)(HC)
Editorial : Sayed Muhammed M. v. CIT (A) (2024) 339 CTR 230 / 237 DTR 542 (Ker) (HC), affirmed.

S. 143(3): Assessment-Principle of natural justice –Video conference is not granted-Agricultural income-Exemption denied on the ground that certificate of Village Administration Officer was furnished in Tamil-Assessment is set aside-The assessee is directed to produce English translation. [S. 10(1), Art. 226] 1537
The Assessing Officer disallowed exemption in respect of the agricultural income of the assessee on the ground that he failed to prove that the exempted income was earned from agricultural activities and did not produce any documentary evidence to prove it and that the report from Verification Unit and the assessee's statement were contradictory. The assessee's claim was that the agricultural income was allowed in the assessment year 2018-19 and that the Assessing Officer did not accept the certificate issued by the Village Administrative Officer since it was in tamil. On a writ it was contended that the assessment order was passed without giving the assessee opportunity of hearing through video conferencing which he had requested. Court held that in the e-mail communications the assessee had clearly mentioned that since it was a high pitched assessment he had sought a hearing through video conference. The Assessing Officer was to grant a hearing to the assessee through video conference. Court also observed that it was the practice in the State of Tamil Nadu that the Village Administrative Officer should issue certificate in Tamil, the assessee was directed to submit a translation copy. The Assessing Officer was directed to consider such copy of the certificate and thereafter complete the assessment. (AY. 2020-21)(SJ)
C. Chellamuthu v. PCIT (2024)467 ITR 715 (Mad)(HC)

S. 143(3): Assessment-Closing stock-Estimation of gross profit-Bullion trading-Stock register maintained, Sales, purchases, stock tally, stock register and delivery challans are produced-Order of Tribunal deleting the addition is affirmed. [S. 260A] 1538
Dismissing the appeal of the Revenue the court held that documents had been examined in detail by the Commissioner (Appeals) and the Tribunal. The findings recorded by the Assessing Officer were against the record as everything had been produced before him by the assessee. No substantial question of law. (AY. 2011-12)
PCIT v. Rajeev Aggarwal (2024) 467 ITR 723 (P&H)(HC)

1539 **S. 143(3): Assessment-Notice under section 143(2)-Jurisdiction of Addl. CIT, NAFAC-Central Charge and effect of National Faceless Assessment Scheme-The operation of the CBDT's order dt. 13th Aug., 2020 is saved by the application of S. 24 of the General Clauses Act, 1897- Restriction under S. 124(3) on the right to raise the question of jurisdiction must extend to all grounds on which jurisdiction is called in question-If the right to call in question the jurisdiction is left open to be raised at any stage, the proceedings will remain inconclusive and that could not have been the intendment of the legislature-Writ petition is dismissed. [S. 119(2), 124(3), 143(3A) to 143(3C), 144B, General Clauses Act, 1897. S. 24, Art. 226]**

Assessee's case was selected for scrutiny, and the Addl. CIT, NAFAC-1(1)(2), Delhi as the Prescribed IT authority) (NAFAC) has issued notice dt. 29th June, 2021 to the assessee under S. 143(2) of the Act. Subsequently, Dy. CIT, Central Circle 2(1), Bangalore, the first respondent has served notices dt. 23rd Nov., 2021, 9th Dec., 2021, 3rd Jan., 2022, 11th Jan., 2022, 19th Feb., 2022, 28th April, 2022, 27th May, 2022 and 12th Aug., 2022 under S. 142(1)-Assessment order was the passed by NAFAC. On writ the assessee contended that assessee's jurisdictional AO is the Dy. CIT, Central Circle 2(1), Bangalore and as such, the Addl. CIT, NaFAC-1(1)(2), Delhi could not have assumed jurisdiction to issue notice under S. 143(2) because the jurisdiction of the first respondent has not been decentralized is not sustainable. Court held that in exercise of power under S. 143(3A) to 143(3C), the Central Government has notified Faceless Assessment Scheme, 2019 and the CBDT, which is conferred with powers to ensure that assessment shall be under the Scheme in respect of certain persons or class of persons or class of incomes under the terms of the Scheme, has issued order dt. 13th Aug., 2020 under S. 119(2) stipulating that all assessment orders shall be by the National E-Assessment Centre through the Faceless Assessment Scheme, 2019 except insofar as the cases assigned to Central Charges and International Taxation Charges. Further, with the CBDT also issuing appropriate notification in exercise of powers under S. 143(2) authorizing certain officers as the Prescribed IT authority for the purposes of this section, notices have been served on all assessees, including the assessees in the case of Central Charges and International Taxation Charges, and because of the order dt. 13th Aug., 2020, the assessment proceedings insofar as the aforesaid two categories are carried forward by the jurisdictional AO. This arrangement with the necessary statutory orders is part of the Scheme notified in exercise of powers under S. 143(3A) to 143(3C)of the Act. There is a transition from a Scheme notified under the provisions of the IT Act to a Scheme under the IT Act incorporating all the essential without material changes insofar as assessments generally and assessments in the cases of Central Charges and International Taxation Charges and there is nothing in this transition, including the provisions of S. 144B or the CBDT's order, to infer exclusion of the operation of CBDT's order dt. 13th Aug., 2020-Therefore the operation of the CBDT's order dt. 13th Aug., 2020 is saved by the application of S. 24 of the General Clauses Act, 1897. Further, restriction under S. 124(3) on the right to raise the question of jurisdiction must extend to all grounds on which jurisdiction is called in question. If the right to call in question the jurisdiction is left open to be raised at any stage, the proceedings will remain inconclusive and that could not have been the intendment of the legislature. Writ petition is dismissed. (AY. 2020-21)(SJ)

Adarsh Developers v. DCIT (2024) 339 CTR 542/ 158 taxmann.com 81 (Karn)(HC)

S. 143(3): Assessment-Alternative remedy - General explanation - Writ petition is dismissed. [S. 69A, 142(1), 250, 254(1), Art. 226] 1540

The Assessing Officer made addition under section 69 as regards cash deposited in the books of account. The assessee challenged the said order by filing writ petition. Dismissing the petition the Court held that the assesseee did not submit return of his income nor submitted any computation of income, P&L a/c, balance-sheet or bank statements. Considering the said response the assessment order was finalised assessing unexplained cash deposits under s. 69A and profit from business and profession. Assessee also filed appeal before the CIT(A) which came to be dismissed. There is absolutely no ground to entertain the writ petition when the assessee has remedy of filing further appeal before the Tribunal under the provisions of the Act. Accordingly the writ is dismissed. (AY. 2017-18)(SJ)

Sayed Muhammed M. v. CIT (A) (2024) 339 CTR 230 / 237 DTR 542 (Ker) (HC)

Editorial : Affirmed by division bench, Sayed Muhammed M. v. CIT (A) (2024) 340 CTR 511 / 237 DTR 540 (Ker)(HC)

S. 143(3): Assessment – Remand – Refund - Appellate Tribunal - Order passed by AO beyond the directions of Tribunal-Order giving effect is quashed-Change of opinion is not permissible-Entitle to refund with interest-Unexplained money-S. 115BBC(1) is not applicable to donations received as offerings from devotees-Strictures-Court also observed that " For determining the taxes due the Assessing Officer should avoid bringing far-fetched and ideas. Without understanding the basic philosophy of income-tax, provisions are referred to so that any assessee can be taxed at any cost which is not fair or judicious approach to deal with the subjects of the State" [S. 11, 12A, 44AB 69A, 115BBC(1), 254(1), 263, Form No 10B, Art. 226] 1541

Tribunal, by an order dt. 15th May, 2023, accepted the plea of assessee that for assessment year in question assessee's total income should be computed as 'nil' as against Rs. 7,75,34,410 assessed by the AO in the assessment order dt. 23rd Feb., 2022 in pursuance to the order under S. 263. Tribunal has also recorded that S. 69A was not applicable to the facts and circumstances of this case. While giving effect to the order of Tribunal the Assessing Officer held that the assessee is not entitle to claim exemption under section 11 of the Act. On writ allowing the petition the Court held that the only task that was left for the AO, was to give the refund of the taxes paid. AO has gone ahead to hold that assessee was not entitled to claim exemption under S. 11 and thereby reviewed the order. Tribunal having accepted assessee's plea that for the assessment year in question, assessee's total income should be computed as 'nil', the only task before the AO was to issue refund to assessee of all taxes paid or recovered from assessee for AY. 2017-18. Before the Tribunal there was no controversy as regards the date of filing of return by assessee or Form 10B, the AO cannot, in the garb of giving effect to the order of Tribunal, initiate a new controversy. Accordingly the order giving effect dt. 30th Nov., 2023 was quashed and set aside. Court also held that the change of opinion is not permissible and the assesseee is entitle to refund with interest. As regards unexplained money the Court held that S. 115BBC(1) is not applicable to donations received as offerings from devotees. Court also observed that for determining the taxes due the Assessing Officer should avoid bringing far-fetched and ideas. Without understanding

the basic philosophy of income-tax, provisions are referred to so that any assessee can be taxed at any cost which is not fair or judicious approach to deal with the subjects of the State. (AY. 2017-18)
Ayyappa Seva Samgham Bombay v. DCIT (2024) 338 CTR 632 / 161 taxmann.com 439 / 467 ITR 672 (Bom) (HC)

1542 **S. 143(3): Assessment-Transfer of case-Order passed by non-jurisdictional AO after transfer of case-Transfer of the PAN was only a consequential proceeding to the transfer of jurisdiction-Order is quashed and set aside by the Tribunal is affirmed. [S. 127, 260A]**
The jurisdictional point was raised by the assessee before the CIT(A). By order dt. 15th March, 2013, the CIT(A) transferred the file to the jurisdiction of the AO in Chennai. It is thereafter the assessing authority had issued notice dt. 21st Feb., 2014 and proceeded to complete the assessment on 24th March, 2014. It is evidently clear that on and after the order passed by the CIT transferring the files to the jurisdiction at Chennai by order dt. 15th March, 2013, the AO in Kolkata has no jurisdiction to deal with the matter. Transfer of the files is a ministerial or an administrative act to be done by the Department for which the assessee cannot be held responsible. The transfer of the PAN was only a consequential proceeding to the transfer of jurisdiction. The Tribunal has examined the facts and has found that on the date when the AO completed the assessment, he had no jurisdiction over the matter. *PCIT v. Capstone Securities Analysis (P) Ltd. (2023) 330 CTR 565/ 221 DTR 249 (Bom) (HC)* concurred with. (AY. 2008-09)
PCIT v. Ojasvi Motor Finance (P) Ltd. (2024) 338 CTR 964/ 163 taxmann.com 80 (Cal) (HC)

1543 **S. 143(3): Assessment – Reassessment - Death of assesseee - Legal representative-Defective appeal-Legal representatives must register themselves in the IT Portal by submitting the PAN of the deceased assessee along with their PAN as the legal representative of deceased assessee and produce a death certificate-Writ petition is dismissed. [S. 148, 148A(b), 148A(d), 159, 221(1), 246A, Art. 226]**
When the appeal was pending the Legal Representative filed the writ petition to quash the reassessment and consequential orders. Dismissing the petition the Court held that after the death of an assessee, the respective legal representatives must register themselves in the IT Portal by submitting the PAN of the deceased assessee along with their PAN as the legal representative of deceased assessee and produce a death certificate of the deceased assessee together with their legal heirship certificate. It is only after such compliance, appeal against an assessment order passed in the name of a deceased person can be numbered and heared. The petitioner as legal heir of the deceased assessee ought to have complied with the same along with other legal representatives of the deceased assessee Mrs Nirmala Subramanian. The petitioner has however filed a defective appeal on 14th June, 2023 before the CIT(A). Having, opted to correctly challenge the assessment order dt. 14th March, 2023 before the CIT(A) by filing an appeal though with defects, it is not open to the petitioner to challenge the assessment order and/or the notices that preceded the impugned assessment order and/or the subsequent notice issued under s. 221(1) in the name of the deceased assessee.

However, liberty is given to the petitioner to work out the remedy before the CIT(A) by curing the defect in the appeal filed on 14th June, 2023. Defects pointed out shall be cured by the petitioner within a period of 45 days of receipt of a copy of this order. (AY 2015-16)(SJ)
P. S. Subramanian v. ITO (2024) 337 CTR 984/ 160 taxmann.com 232 (Mad) (HC)

S. 143(3): Assessment-Losses under head capital gains-Pendency of appeal-Alternative remedy-Writ is not maintainable. [S. 45, 74, 246A, Art. 226] 1544
Dismissing the petition the Court, power of an appellate authority under Act is co-terminus with that of an Assessing Officer and hence any lacunae in procedure can well be corrected even at that stage. The assessee challenged impugned assessment order on ground that order of assessment had travelled beyond scope of show-cause notice as said order rejected assessees entitlement to carry-forward long-term capital loss even when such a proposal did not form part of pre-assessment show-cause notices, since assessee had already challenged assessment order by way of a statutory appeal and there being no extraordinary circumstances in instant case to intervene in impugned order, it was to be left to assessee to pursue. Court observed that it is left to the assessee to pursue the statutory appeal filled by it. (AY. 2021-22)(SJ)
Shapoorji Pallonji Solar Holdings (P) Ltd. v. ITO (No. 1) [2023] 152 taxmann.com 52 / (2024) 337 CTR 981 / 470 ITR 139 (Mad) (HC)
Editorial : Affirmed in Shapoorji Pallonji Solar Holdings Pvt. Ltd. v. ITO(No. 2) (2024)470 ITR 142 (Mad) (HC)

S. 143(3): Assessment-Order of assessment without providing assessee opportunity to be heard-Not valid. [Art. 226] 1545
Held, that the entire alleged agricultural income of the assessee was added to the returned income to arrive at the respective assessee's liability. This was done without considering the genuineness or validity of documents produced by the respective assessee to substantiate that the income was agricultural. If the documents were genuine and valid, there would be miscarriage of justice. Therefore the respective assessment orders and the penalty orders under sections 270A and 271AAC(1) of the Income-tax Act, 1961, were liable to be quashed. (AY. 2020-21)
Parvathi v. NFAC (2024)465 ITR 760 (Mad)(HC)
G. Ganesh v. NFAC (2024)465 ITR 760 (Mad)(HC)

S. 143(3): Assessment-Insolvency of Assessee-Claims to Interim Resolution Professional include claims not yet adjudicated-Insolvency petition during pendency of assessment proceedings-Revenue aware of petition and its approval-No claim before Interim Resolution Professional-Order of assessment and demand is not valid. [Insolvency and Bankruptcy Code, 2016, S. 31, The Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016, Art. 226] 1546
Held, that having regard to the fact that the Revenue had not lodged its claim, despite the publication of the public announcement by the resolution professional inviting claims from creditors, including statutory and operational creditors such as the Revenue, no provision could be made (even if it may otherwise have been possible) in the

approved resolution plan. The terms contained in the approved resolution plan were binding on all stakeholders, including those who could have filed claims but chose not to lodge them. The Revenue, having failed to lodge its claim, could not enforce the orders and notices, given the binding nature of the approved resolution plan. The orders and notices were not valid. (AY. 2017-18)
Rishi Ganga Power Corporation Ltd v. ACIT [2024] 464 ITR 133 (Delhi)(HC)

1547 **S. 143(3): Assessment-Search and seizure-Violation of principle of natural justice-Assessment order is set aside-Matter remanded to Assessing Officer-Seizure of Pen drive and other Electronic records-Evidentiary value-Mandatory conditions under law of evidence not complied with-Assessment order is set aside. [S. 132, 132(4), 153A, 271AAB(IA), 271AAD(1(i), Indian Evidence Act, 1872, 65B]**
Allowing the petition the Court held that though it was not necessary for the assessee to provide any reason while seeking to be provided an opportunity for cross-examination of the witnesses whose statements were recorded during the search under section 132, the assessee had provided the reasons for which it required to cross-examine the seven witnesses of employees whose statements before the Assistant Commissioner were relied upon as documents and proof for passing the assessment orders in question. The reasons mentioned by the assessee were just and reasonable. To find out the veracity of the statements, the assessee was entitled to cross-examine the witnesses and to file its effective replies. Therefore, it was the bounden duty of the Assistant Commissioner to have provided a personal hearing and an opportunity to the assessee to cross-examine the witnesses. Nowhere in the correspondence, had the Assistant Commissioner mentioned about the personal hearing and providing opportunity for cross-examination depriving assessees of the legal right which amounted to violation of principles of natural justice. Not affording an opportunity to the assessee to cross-examine the witnesses, thereby violating the principles of natural justice, made the orders null and void. That with regard to the admissibility and reliance placed on the electronic evidence of the pen drive and other electronic equipment seized during the search, the contents contained therein, had to be certified in terms of section 65B of the Indian Evidence Act, 1872 but no such certification was done. Therefore, the orders having been passed in violation of the principles of natural justice and in non-compliance with section 65B of the 1872 Act, were set aside. The matters were remanded to the Assessing Officer for de novo assessment. Matter remanded. (AY. 2021-22)
SKM Animal Feeds and Foods (India) Pvt. Ltd. v. ACIT (2024) 464 ITR 213 (Mad)(HC)
Sivan Ramesh v. ACIT (2024) 464 ITR 213 (Mad)(HC)

1548 **S. 143(3): Assessment-Recovery of tax-Priority of debts-Corporate Insolvency Resolution-Overriding effect of Insolvency and Bankruptcy Code, 2016-Claim frozen as on date of Resolution plan-Interest cannot be charged under Sections 234A, 234C, while giving effect to order of Tribunal-Income-Tax does not have priority over debts of secured creditors. [S. 234A, 234B, 254(1) Insolvency and Bankruptcy Code, 2016, S. 3, 4,13, 14(1)(a), 15]**
Allowing the petition the Court held that t admittedly the claim for Income-tax was not lodged by the Department after public announcements were issued under sections

13 and 15 of the Code. On the date on which the resolution plan was approved by the National Company Law Tribunal, all claims stood frozen, and no claim, which was not a part of the resolution plan, would survive. Hence the amount of Rs. 6,98,230 stood frozen by the operation of the moratorium under the Code. No claim could be made against the assessee. The charge of interest amounting under section 234A, under section 234B and under section 234C of the Income-tax Act, 1961 did not survive. *Dena Bank v. Bhikhabhai Prabhudas Parekh and Co (2001) 107 Comp Cas 157 (SC), (2000) 5 SCC 694, Ghanashyam Mishra and Sons Pvt. Ltd. v. Edelweiss Asset Reconstruction Company Ltd(2021) 227 Comp Cas 251 (2021) 9 SCC 657 ; Ruchi Soya Industries Ltd. v. UOI (2022) 231 Com Cas 308, (2022) 20 GSTR-159 (SC), (2022) 6 SCC 343.* (AY. 2021-22)
Sree Metaliks Ltd. v. PCIT (2024) 464 ITR 144 / 336 CTR 102 (Orissa)(HC)

S. 143(3): Assessment-Reassessment-After the expiry of four years-Unexplained money-search-Cash payment-Peak amount-Unaccounted investment-Alternative remedy-Writ petition is dismissed. [S. 69A. 115BBE, 143(3), 147, 148, Art. 226] 1549

Assessing Officer issued notice under section 148 on basis of several incriminating documents connected with assessee found during course of search on a group. Assessee filed return of income Assessing Officer passed the assessment order determining by making addition of certain amount being peak credit balance of cash payment made by assessee to a person by treating same as unaccounted investment within meaning of section 69A read with section 115BBE. Assessee filed writ petition before High Court challenging reopening notice as well as assessment order as satisfaction note issued by Assessing Officer for reopening did not refer to incriminating material having direct correlation with income pertained to assessee for relevant assessment year. Dismissing the petition the Court held that it was not in dispute that this petition was filed after assessee participated in assessment proceedings before Assessing Officer after issuance of notice under section 148. In response to notice under section 142(1), assessee raised issue with regard to connection of incriminating material and addition proposed by Assessing Officer. Assessing Officer, after considering such reply on merits, passed assessment order. The Assessing Officer had considered in detail merits of seized material found during course of search, and thereafter, made addition. On facts, petition could not be entertained and assessee was to be relegated to avail alternative efficacious remedy of preferring appeal before Commissioner (Appeals) challenging the assessment order raising all contentions which were raised in this petition. Relied on *Godrej Sara Lee Ltd v. Excise and Taxation Officer-Cum-Assessing Authority (CA No. 5393 of 2010 dt. 1-2-2023)(SC)* (AY. 2016-17)
Rameshbhasi Jivrajbhai Desai v. Dy. CIT (2024) 299 Taxman 287 (Guj.)(HC)

S. 143(3) :Assessment-Reassessment-Interest from providing credit facilities to its members and also interest on fixed deposit-Alternative remedy-Writ petition is dismissed. [S. 80P, 148, Art. 226] 1550

Assessee, co-operative society, claimed deduction under section 80P which was allowed. Assessing Officer issued notice under section 147 to propose disallow the claim and also passed the assessment order disallowing the claim. The assessee had challenged reassessment notice after re-assessment order was passed and moreover after lapse of time for filing statutory appeal. Dismissing the petition the Court held that there was

delay in statutory audit by State Government or whether assessee at all requested State Government for statutory audit, whether assessee prepared statement of accounts, etc. and submitted to Registrar, required factual adjudication which was beyond scope of proceedings under Article 226 of Constitution of India. Accordingly the assessee is not entitled to invoke extra-ordinary writ jurisdiction of High Court having not availed alternative remedy as provided for under Act. (AY. 2013-14, 2014-15)
Telco Co-operative Society Ltd. v. CIT (2024) 299 Taxman 477 /471 ITR 285 (Jharkhand)(HC)

1551 **S. 143(3): Assessment-Ex-parte order-Change of address-Notice is served by affixing in old address-Order is set aside-Matter remanded-Directed to the Assessing Officer to serve copy of notice to new address and, thereafter affording an opportunity to assessee, pass a fresh order. [S. 127, 147, 148, Art. 226]**
The assessee had challenged the assessment order passed under section 148 contending that no notice under section 147 or section 148 was received by the assessee. Similarly, no assessment order and notice under section 143(2), 143(1) were served on the assessee by the ITO and no notice under section 271 (1)(c) was served on the assessee. Allowing the petition the Court held that the when the change of address is already in the record of the assessee, notice is served by affixing in old address is not valid service. Accordingly the order is set aside Court directed to the Assessing Officer to serve copy of notice to new address and, thereafter affording an opportunity to assessee, pass a fresh order. (AY. 2009-10)
Poddar Real Estates (P.) Ltd. v. ITO (2024) 299 Taxman 183 (Cal.)(HC)

1552 **S. 143(3): Assessment-Person-Company-An assessee to be assessed for income tax must be a person in existence-A company is a juridical person but the moment it is struck off from the Register of Companies and is dissolved, it ceases to exist and no assessment can be made against a dead person. [S. 2(31)(iii), 2(31(vii), 179, 226(3) Companies Act, 1956, S. 560(5), 560(7), Companies Act, 2013, S. 248, 250]**
On appeal the Court held that on plain reading of Subsection (7) along with Subsection 31 of Section 2 observed held that the Assessee to be assessed for income tax u/s 143 of the Income Tax Act must be a person in existence. Indisputably, a company is a juridical person but the moment it is struck off from the Register of Companies and is dissolved, it ceases to exist. Making of an assessment order against a non-existent company would be like passing a decree by a civil court against a dead person. Such an order of assessment made against a non-existent entity would be a nullity and would not give rise to any right or liability under such assessment order. (AY. 2004-05)
Rainawari Finance and Investment Co. Pvt. Ltd. v. Income-Tax Officer [2024] 463 ITR 65 /339 CTR 433 (J&K&Ladakh)(HC)

1553 **S. 143(3) :Assessment-Search and seizure-Procedure laid down by Digital evidence Investigation Manual by Central Board of Direct taxes-Mandatory-Search warrant defective-Search violative of Rule 112-Digital data evidence collected by the Revenue from unknown locations without any valid search warrant and without following the guidelines issued by the CBDT vide Digital Evidence Investigation Manual-Not given an opportunity of cross examine the witness-Circulars issued by the CBDT is binding**

on all Income tax Authorities-Assessment order is quashed. [S. 119, 143(3), R. 112, Art. 226]

Search was conducted on various dates and electronic data was seized without following the Digital Evidence Investigation Manual issued by CBDT in terms of s. 119 of the Act. The assessee challenged the assessment orders passed by relying on the digital evidence collected on the grounds that the said evidence was not collected in terms of Manual issued by CBDT, hash value was not mentioned in Panchanama, copies thereof were not provided inspite of making several requests and orders were passed in violation of principles of natural justice. The Revenue contended that the assessee had filed appeals, seizure was in accordance with law, evidence relied upon to make additions was duly corroborated and writs deserved to be dismissed as alternative remedy available has been availed by the assessee. However, the Court rejected the contentions of the Revenue and held that the seizure was made without following the mandatory requirement of an independent witness, The Manual issued has to be followed in letter and spirit since the same was issued under section 119 of the Act and it was not optional, data relied upon for passing assessment order was not corroborated by any other evidence, cross-examination was not granted to the assessee of persons whose sworn statements were relied upon by the Revenue and thus, the said search and seizure is against the law and ab initio bad. However, taking into consideration the violation of principles of natural justice and avoiding multiplicity of proceedings, assessment orders were set aside and remitted back the matters to authorities concerned for reconsideration, and the assessee was granted cross-examination. The Assessing Officer was also directed to follow the above procedures in the event of issuance of any further show cause notices in connection with the present search and seizure relating to other assessment years. (AY. 2018-19)(SJ)

Saravana Selvarathnam Retails (P.) Ltd. v. CIT [2024] 463 ITR 523 / 298 Taxman 319/ 339 CTR 10(Mad)(HC)

S. 143(3): Assessment-Income-Tax Authorities-High Court-Binding precedent-Decision of High Court is binding on Income-Tax Authorities-Order of Assessment ignoring direction of High Court is not valid [S. 56(2)(viib), Art. 215, 226, 227] 1554

Allowing the petition the Court held that under article 215 of the Constitution, every High Court shall be a court of record and shall have all the powers of such a court including the power to punish for contempt of itself. Under article 226, it has a plenary power to issue orders or writs for the enforcement of the fundamental rights and for any other purpose to any person or authority, including in appropriate cases any Government, within its territorial jurisdiction. Under article 227 it has jurisdiction over all courts and Tribunals throughout the territories in relation to which it exercises jurisdiction. The law declared by the highest court in the State is binding on authorities or tribunals under its superintendence, and they cannot ignore it either in initiating a proceeding or deciding on the rights involved in such a proceeding. Any order contrary to or disregarding the direction of the High Court cannot be sustained as it renders the order bad for want of jurisdiction. Accordingly the Court directed the Assessing Officer to undertake the exercise of finding a fair market value of share as contemplated in the Explanation to section 56 of the Act. However, the exercise had not been completed.

Hence, the assessment order was not valid. Followed, East India Commercial Co Ltd v. Collector of Customs (1963) 3 SCR 338/ AIR 1962 SC 1893. " We, therefore, hold that the law declared by the highest court of State is binding on the authorities or Tribunals under its superintendence, and that they cannot ignore it either in initiating proceedings or deciding on the rights involved in such proceedings. If that be so, the notice issued by the authority signifying the launching of proceedings contrary to the law laid down by the High Court would be invalid and the proceedings themselves would be without jurisdiction." (AY. 2014-15) (SJ)
Vaani Estates Pvt. Ltd. v. Add. CIT (2024)462 ITR 232 (Mad)(HC)

1555 **S. 143(3): Assessment-CBDT Circular No. 14 Of 1955-Duty of Assessing Officer to grant relief to assessee even if not claimed-DTAA-India-USA. [S. 119, 139, 143(1), 260A, Art. 12]**
Dismissing the appeal of the Revenue the Court held it was not the case of the Department that the income received by the assessee for the services rendered to an Indian company was taxable, the benefit of article 12 of the Double Taxation Avoidance Agreement between India and the United States of America was available to the assessee, rectification had been ordered with respect to two other group companies, in similar circumstances, respectively, and Circular No. 14 of 1955 dated April 11, 1955, which, inter alia, casts a duty on the officers of the Department to draw the attention of the assessee towards any relief that may be available to them, which the assessee may have inadvertently omitted to claim, was applicable in the instant case. The Tribunal was right in granting relief to the assessee. Court held that according to the Central Board of Direct Taxes Circular No. 14 of 1955, officers of the Department must not take advantage of the ignorance of an assessee as to his rights. It is one of their duties to assist a taxpayer in every reasonable way, particularly in the matter of claiming and securing reliefs and in this regard the officers should take the initiative in guiding a taxpayer where proceedings or other particulars before them indicate that some refund or relief is due to him. (AY. 2018-19)
CIT (IT) v. Heidrick and Struggles Inc. (2024)461 ITR 33 (Delhi)(HC)

1556 **S. 143(3): Assessment-Natural justice-Order passed without giving adequate opportunity to be heard-Not valid-Leave is granted to file reply in response to show cause notice issued u/s 142(1) of the Act. [S. 142(1), Art. 226]**
Held, that the show-cause notice dated May 12, 2023 did not accord a minimum of seven days to the assessee to file a response. The order of assessment was therefore not valid. The petitioner is given leave to file a response to the shoe cause notice dated April, 26 issued under section 142(1) of the Act. (AY. 2013-14)
Dauphin Travel Marketing Pvt. Ltd. v. ITO (2024)460 ITR 589 (Delhi)(HC)

1557 **S. 143(3): Assessment-Search and seizure-Undisclosed profit-Loose papers and other documents-Failure to examine the Chartered Accountant-Matter remanded to the Tribunal for reconsideration. [S. 132, 132(4A), 292C]**
During search and seizure, Assessing Officer seized books of account, loose papers and other documents. Assessing Officer examined and compared these loose papers with regular books of account and found that assessee had not consider certain pages

of loose bunch in books of account. Assessee, in his statement, stated that those pages denoted trial balance for period of 1-4-1997 to 31-3-1998 and that it summarized his entire business operation for 1997-98 and subsequently he retracted from statement stating that it was a "test trial balance of imaginary figures". Assessing Officer, computed undisclosed income of assessee at 3.25 crores. Commissioner (Appeals) and Tribunal deleted addition made by Assessing Officer. On appeal the Court held that the assessee being a businessman, accounts were prepared by Accountant or Chartered Accountant (CA) and same were audited, hence it was CA who was in position to give statement regarding statement of accounts or Trial balance, thus Assessing Officer ought to have examined Accountant of establishment regarding documents seized. Therefore, issue is remitted to Tribunal for reconsideration. (AY. 1998-99)
CIT (Central) v. Ashok Kumar Poddar (2024) 296 Taxman 171 /463 ITR 739 (Cal.)(HC)

S. 143(3): Assessment-Penalty-Tax in default-Covid 19-Notices were issued to the registered e-mail of assessee which was operated and accessed only by the Chartered Accountant-Matter was remanded to department to pass a fresh order. [S. 142(1), 221, Art. 226] 1558

The assessment order is passed and demand notice is issued in the name of one of the partner. on writ it was contended that notices were issued to the registered e-mail of assessee which was operated and accessed only by the Chartered Accountant. On account of confusion due to outbreak of Covid 19 pandemic, notices issued under section 142(1) were not accessed and only after department issued demand notice under section 221(1) directly to one of partners of assessee, that assessee came to know that it had already suffered an adverse assessment order. High Court remanded the matter to department to pass a fresh order.
VKCN Realties LLP v. NFAC (2024) 296 Taxman 442 (Mad.)(HC)

S. 143(3): Assessment-Limited scrutiny-Issue decided by AO with respect to carry forward of losses was not part of limited scrutiny for which assessment was directed to be scrutinised, since AO did not abide by Instruction No. 5/2016, dated 14-07-2016 and exceeded his jurisdiction, disallowance made with respect to carry forward of losses was to be deleted. [S. 72, 260A] 1559

Assessee's case selected for scrutiny assessment. AO issued notice u/s 142(1) and passed order u/s 143(3) whereby he rejected et-off and carry forward of loss and made additions in income of assessee. On appeal to the Tribunal, it was held that the limited scrutiny for which the assessment was ordered to be scrutinized did not include the matter that the Assessing Officer decided. On appeal, the Calcutta High Court observed that the CBDT has noted instances where some of the Assessing Officer were travelling beyond the issues while making assessment in limited scrutiny cases by initiating inquiries on new issue without complying with mandatory requirements of the relevant CBDT Instruction dated 26-9-2014, 29-12-2015 and 14-7-2016. Further, it was reiterated that the Assessing Officer should abide by the Instructions of CBDT while completing limited scrutiny assessment and should be scrupulous about maintenance of note sheets in assessment folders. The order of the tribunal upheld. (AY. 2015-16)
PCIT v. Weilburger Coatings (India) (P.) Ltd (2023) 155 taxmann.com 580 /(2024) 296 Taxman 205/463 ITR 89 (Cal)(HC)

1560 **S. 143(3): Assessment-Assessment order passed in spite of valid objections pending before DRP is bad in law. [S. 144C, Art. 226]**
Allowing the petition the Court held that it has been held that the assessment order passed by AO during the pendency of valid objections before the DRP, is against the provisions of law. Hence, the same is quashed and set aside.
Convergys India Services v. NFAC (2024) 461 ITR 88 (Delhi)(HC)

1561 **S. 143(3): Assessment-Principles of natural justice-Cross examination not granted by the Assessing Officer-Order of the Tribunal setting aside the assessment was upheld by the High Court. [S. 260A]**
The AO completed the assessments for A. Y. 2013-14 to 2017-18 based on the information received from Directorate General of GST Intelligence (DGGI) intimating that the assessee had supressed the sales by not accounting the same or by undervaluation. The AO referred and relied upon the statements recorded of various persons. The request to grant cross examination by the assessee was not granted by the AO while completing the assessment and making additions on account of income from such sales. The CIT(A) granted partial relief. However, on further appeal, the Tribunal set aside the assessment on the ground that orders were passed in violation of principles of natural justice as no cross examination was granted. The appeal filed against the Tribunal orders were dismissed by the High Court holding that the Tribunal had rightly interfered with orders passed by lower authorities. (AY. 2013-14 to 2017-18)
PCIT v. DSG Papers P. Ltd. (2024)461 ITR 4 (P&H)(HC)
Editorial: Relied on Andaman Timber Industries v. CCE [2015 81 CTR (SC) 241/ 38 GSTR 117 (SC), CIT v Rajesh Kumar [2008] 306 ITR 27 (Delhi) (HC)

1562 **S. 143(3): Assessment-Digital signature was affixed after limitation period-Order is bad in law-Barred by limitation. [S. 153]**
Tribunal held that signing of the assessment order is a mandatory requirement and not procedural formality, unless the order is signed the assessment order does not complete. On the facts the digital signature was affixed on 1-10-2021, and statutory limit was 30-9-2021 hence the order is beyond limitation period hence not valid. (AY. 2018-19) (ITA No. 1387/Mum/ 2023 dt. 1-10-2024)
ACIT v. Bennett Coleman & Co Ltd (2024) Chamber's Journal-November-P. 111(Mum)(Trib)

1563 **S. 143(3): Assessment-Jurisdiction-Income include loss-Corporate assessee-Jurisdiction was with ACIT/Dy. CIT-The assessee had disclosed loss of Rs. 3,29,55,888-Notice is valid-Rejection of books of account is justified-Estimate of 10 percent of net profit is reasonable. [S. 2(24), 120, 143(2), 145(2)]**
Held that the Jurisdiction over corporate assessees in metro cities with income of Rs. 30 lakhs and above was with Asstt. CIT/Dy. CIT in view of the CBDT Instruction No. 1 of 2011, dt. 31st Jan., 2011. On facts the assessee has disclosed loss of Rs. 3,29,55,888 in the relevant year, notice under s. 143(2) was correctly issued by the Dy. CIT. Rejection of books of account is justified and estimate of 10 percent of net profit is reasonable (AY. 2015-16)
Shivam Builders (P) Ltd v. Dy. CIT (2024) 230 TTJ 257 / 239 DTR 209 /38 NYPTTJ 595 / 163 taxmann.com 196 (Ahd)(Trib)

S. 143(3): Assessment-Corrigendum to assessment order-Held to be valid-CIT(A) is directed to decide on merits. 1564

Held that AO having passed the assessment order wrongly noting the details of some other assessee and subsequently rectified the mistake by issuing a corrigendum which is matching with the computation sheet and demand notice issued along with the original assessment order, the corrigendum is a valid assessment order. Tribunal directed the CIT(A) to decide on merits. (AY. 2017-18)

ITO v. Rajkumari (Ms.) (2024) 232 TTJ 1038 / 38 NYPTTJ 1388 (Chenai) (Trib)

S. 143(3): Assessment-Limited scrutiny-Conversion of limited scrutiny into complete scrutiny without prior approval-CBDT Instruction No. 5 of 2016-Assessment is bad in law. [S. 143(2)] 1565

Held that assessment was selected assessee's case only for scrutinizing cash deposits made during the demonetization period and ultimately made no addition towards the said cash deposits, the AO exceeded his powers in making the assessment by making other additions, without following procedure lad down by CBDT Instruction No. 5 of 2016, and therefore, the impugned assessment order is not sustainable. (AY. 2017-18)

Srimanta Kumar Shit v. ACIT (2024) 232 TTJ 925 / 38 NYPTTJ 1444 (Kol)(Trib)

S. 143(3): Assessment-Limited scrutiny-Interest income mismatch-Without following the prescribed procedure and necessary approval of the competent authority conducting an enquiry on the issue which is outside the limited scrutiny would be beyond the jurisdiction of the AO-The Assessment order is quashed. [S. 143(2)] 1566

Held that the AO can examine the other issue if he follows the route of taking the necessary approval for converting the limited scrutiny into complete scrutiny and thereby extend the scope but without doing so, making the assessment on the issue which was not subject-matter of selection is in disregard of the scheme of assessment framed by the CBDT vide Instruction No. 5 of 2016, dt. 14th July, 2016. The AO is duty-bound to follow the instructions in case limited scrutiny assessment proceeding which are proposed to be converted into complete scrutiny and without following the prescribed procedure and necessary approval of the competent authority conducting an enquiry on the issue which is outside the limited scrutiny would be beyond the jurisdiction of the AO. (AY. 2015-16)

Sunita Singhvi v. ACIT (2024) 230 TTJ 236 (Jodhapur) (Trib)

S. 143(3): Assessment-Copy of statement of foreign bank account is provided-Remand report is obtained –No violation of principle of natural justice-Order of CIT(A) is affirmed. 1567

Held that once having denied the ownership of the accounts before the AO, the assessee cannot take a plea that no sufficient opportunity was allowed by the AO to explain the credit entries in the foreign bank account. Further, it is found that the CIT(A) also allowed sufficient opportunities to the assessee to explain the transactions in the foreign bank accounts by admitting the additional evidences filed before him. Assessee made submissions before the AO in the course of remand proceeding as well as before the CIT(A) after receipt of the remand report. Even if the CIT(A) passed his order within a month of the remand report, it is not the case that the he did not consider the

submissions of the assessee on the rejoinder of the remand report. Rather, the CIT(A) passed a detailed order considering and taking into account the submissions of the assessee and substantially reduced the additions as made by the AO. Therefore, there is no instance of violation of natural justice in this case. The assessee was allowed sufficient opportunities to explain the transactions in the foreign bank accounts. (AY. 2000-01 to 2016-17)
Manjulaben Bipinbhai Patel L/H of Late Bipinbhai P. Patel. v. Dy. CIT (2024) 232 TTJ 1 / 243 DTR 57 (Ahd)(Trib)

1568 **S. 143(3): Assessment-Rejection of books of account –Bogus purchases-Estimate of profit-Business of purchase, sale, manufacturing and trading of gold jewellery and diamonds-Declared profit of 11. 98 percent-Rejection of books of account and estimate of 25% of alleged bogus purchases is deleted. [S. 145(3)]**
The Assessee is in the business of purchases purchase, sale, manufacturing and trading of gold jewellery and diamonds. The assesseee declared profit of 11.98%. The Assessing Officer rejected the books of account and estimated profit of 25% on account of alleged bogus purchases. CIT(A) affirmed the order of the AO. On appeal the Tribunal held that the assessee's books of account were not found defective and the AO accepted that in fact the assessee has purchased the goods. Assessee has placed on record quantitative details and bills and consequent payment details, and the lower authorities have not found any fault with the said details. Assessee has declared profit from the diamond and jewellery business @11. 98 per cent as against the profit rate of 6 per cent recognized by CBDT vide Instruction No. 2 of 2008, dt. 22nd Feb., 2008 as the reasonable rate in the case of an assessees dealing in diamonds. Though the AO has invoked the provisions of s. 145(3), the assessment is made under s. 143(3) the assessee has discharged its burden of proving the genuineness of book results. AO has not done any independent and proper investigation. Merely because the third person has stated that he is involved in issuing accommodation bills, the book results declared by the assessee which is better than the industry norms prescribed by the CBDT cannot be rejected. Addition is deleted. (AY. 2014-15)
Khandelwal Diamonds P. Ltd. v. DCIT (2024) 228 TTJ 370 / 235 DTR 202 (Jaipur)(Trib)

1569 **S. 143(3): Assessment-Search-Abatement of assessment-Documents relating to company and directors are seized-Pending assessment is abated-Assessment has to be made under section 153A or 153C-Assessment order is quashed and set aside. [S. 68, 132, 153A, 153C]**
In the course of search certain documents were seized. The Assessing Officer assessed the assessment under section 143 (3) of the Act and made addition under section 68 of the Act. On appeal there was difference of opinion amongst the members of the ITAT. The matter is referred to third member on following question of law. " Whether in the facts, circumstances and evidences on record in both the above appeals the AO was justified in passing the assessment orders under section 143(3) instead of passing the assessment orders under section 153C of the IT Act, 1961 " and also other three questions. The third member held that in view of the fact that search was conducted at the premises of the common director of both the assessee-companies and various documents relating to both the companies were found and seized during the pendency

of the regular assessment proceedings in the case of the assessee-companies, the pending assessment proceeding stood abated by virtue of the second proviso to S. 153A read with proviso to S. 153C and, therefore, the AO was required to make the assessments under S. 153C and not under S. 143(3); consequently, the assessment order passed under s. 143(3) is invalid and bad in law. Other questions became infructuous Third member has agreed with the view of the Judicial Member. Questions are answered in favour of assessee. (AY. 2014-15)
Kalyanika Infra Mega Ventures (P) Ltd. v. DCIT (2024) 227 TTJ 14 / 233 DTR 85 / (TM) (Jabalpur)(Trib)
Tarun Devcon (P) Ltd v. DCIT (2024) 227 TTJ 14 / 233 DTR 85 / (TM)(Jabalpur)(Trib)

S. 143(3): Assessment-limited scrutiny through CASS-Cash credits-The Assessing Officer cannot make addition other than the issue covered under limited scrutiny-CBDT Instruction No. 5 of 2016, dt. 14th July, 2016 [S. 143(2)] 1570
Held that the assessment being selected limited scrutiny through CASS, the Assessing cannot make made enquiries and additions on issues beyond the issues involved in the limited scrutiny without seeking prior approval and permission of the Principal CIT, the assessment framed by the AO on the said issues is quashed. Addition is deleted. (AY. 2015-16)
Shivalik Educational & Placement Services (P) Ltd. v. ACIT (2024) 227 TTJ 704 / 237 DTR 86 (Delhi)(Trib)

S. 143(3): Assessment-Search and seizure-Undisclosed sales-CIT(A) restricted profit element at 8 per Cent of sales-Credit to be given to income surrendered. [S. 132] 1571
The AO has made addition of entire undisclosed sales. CIT(A) estimated the profit at 8 per cent of sales. On appeal the order of the CIT(A) is affirmed and cross objection of the assessee is allowed to give credit to income surrendered against estimation of income. (AY. 2019-20)
ACIT v. Conor Granito P. Ltd. (2024)116 ITR 479/ 159 taxmann.com 1209 (Rajkot)(Trib)

S. 143(3): Assessment-Accrual-Mercantile system of accounting-Professional and technical services-Sale of judgement text-Right to receive income accruing under agreement arising only on satisfaction of conditions stipulated in agreement-Order of CIT(A) deleting the addition is affirmed. [S. 5, 194J] 1572
Held that the right to receive the income accruing under the agreement arose only after inspection and acceptance of the materials by L as stipulated under clause 4. 2(b) of the agreement. And, until the conditions stipulated in clause 4. 2(b) were satisfied, the income embedded in the agreement is only a hypothetical income. The Assessing Officer had erred in concluding that the balance amount had accrued to the assessee based on terms of clause 4. 2(a) instead of clause 4. 2(b). Order of CIT(A) is affirmed. *CIT v. Ashokbhai Chimanbhai (1965) 56 ITR 42 (SC)* relied on wherein the Court held that It is well-settled that income can be said to accrue only when the assessee acquires a right to receive that income and such accrual may depend on the agreements which may give rise to such rights. (AY. 2013-14)
ACIT v. Suryanarayana Iyer (2024)116 ITR 485/ [2025] 170 taxmann.com 831 (Chennai) (Trib)

1573 **S. 143(3): Assessment-Search-Statement in the course off search-Purchase of property-No incriminating material was fund-Dumb document-Addition is deleted. [S. 132, 158BC]**

Held that addition cannot be in block assessment solely on the basis of the statement recorded during search. Such a statement cannot be treated as incriminating material found during search. Only on the basis of dumb document and mere statement recorded during search cannot be treated as incriminating document for making addition in a search case. Relied, *CIT v. Mantri Share Brokers P. Ltd. [2018 405 ITR 24 (SC)(St)* AY. 2021-22)

Jagbir Singh Nehra v. Dy. CIT (2024)116 ITR 60 (SN)(Chd)(Trib)

1574 **S. 143(3) : Assessment-Agricultural income-Estimation-Matter remanded to the Assessing Officer for fresh adjudication-The Tribunal also directed the assessee to pay cost of Rs. 6,000 with the direction to deposit costs in the Prime Minister's National Relief Fund and receipt thereof to be produced before the Assessing Officer before the commencement of the proceedings.**

Tribunal remanded the matter to the Assessing Officer to consider the additional evidence and decide on merits. The Tribunal also directed the assessee to pay cost of Rs. 6,000 with the direction to deposit costs in the Prime Minister's National Relief Fund and receipt thereof to be produced before the Assessing Officer before the commencement of the proceedings. (AY. 2012-13 to 2017-18)

Ramji Lal v. ITO (2024)116 ITR 79 (SN) (Jaipur)(Trib)

1575 **S. 143(3):Assessment-Limited scrutiny-Additional legal ground is admitted-Cash deposits-Assessing Officer converted the limited scrutiny to regular assessment-Order is quashed and set aside-Instruction No. 5 Of 2016, Dated 14-7-2016 (2016) 385 ITR 56 (St) [S. 56(2)(vii)(b)(ii), 68, 69A, 133(6), 142(1), 143(2), 254(1)]**

The assessee has raised additional grounds before the Tribunal urging that that the Assessing Officer had erred in issuing notice under section 143(2) without complying with the Central Board of Direct Taxes Instruction F. No. 225/157/2017/ITA-II, dated June 23, 2017 (2016) 385 ITR 56 (St) and that the assessment order under section 143(3) provided that the return was selected for limited scrutiny on the issue of "cash deposit during demonetisation" and that the additions made in the assessment order was without jurisdiction. The Department contended that no expression exhibiting the aspect of limited scrutiny was used by the Assessing Officer and that the notice would indicate that the case was selected for scrutiny assessment. Tribunal admitted the additional ground. The Tribunal held that the Assessing Officer had not made any addition on account of cash deposits made during the demonetisation period. The assessee has deposited small amounts, which had been accepted by the Assessing Officer. Therefore, the assessment order itself was not sustainable because it had been passed by the Assessing Officer in excess of his limited powers. The Assessing Officer ought to have followed the procedure contemplated in the Central Board of Direct Taxes Instruction No. 5 of 2016 for converting a limited scrutiny assessment into a full scrutiny. Assessment order is quashed. Addition is deleted. (AY. 2017-18)

Srimanta Kumar Shit v. ACIT (2024) 116 ITR 51 (SN)/ 169 taxmann.com 185 (Kol)(Trib)

S. 143(3): Assessment-Amalgamation-Amalgamating company ceases to exist-Intimated to the Assessing Officer-Order passed in name of amalgamating company is void ab initio-Order is quashed [S. 2(31), 92CA, 144C] 1576

Held that both the draft as well as final assessment orders had been passed in the name of a non-existent company. Passing of an order in the name of an entity which has merged with another entity will make the order void ab initio as it cannot be treated as a mere procedural irregularity but affects the jurisdiction of the Assessing Officer. The assessment order passed in the name of a non-existent entity is held to be void ab initio hence quashed. (AY. 2016-17)

Boeing India P. Ltd. v. ACIT (2024)115 ITR 530 (Delhi)(Trib)

S. 143(3): Assessment-Jurisdiction-Pecuniary Jurisdiction-Non-corporate returns declaring income above Rs. 20 Lakhs with Assistant Commissioner or Deputy Commissioner and not with ITO-Notice and consequential assessment order is invalid-Instruction No. 1/2011 (F. No. 187/12/2010-It(A-I), Dated 31-1-2011. [S. 143(2), 148, 149(1)(b)] 1577

Held that as the addition is over Rs. 20 lakhs, the Assessing Officer had no jurisdiction to issue notice under section 148 in terms of section 149(1)(b) since he did not have any books of account, document or evidence to show that income escaping assessment would amount to, or likely to amount to, Rs. 50 lakhs or more. The notice had been passed by the ITO, who was a non-jurisdictional authority, when it should have been issued by the officer of the rank of Assistant Commissioner or Deputy Commissioner. Therefore, the assessment framed by the Assessing Officer is invalid for want of jurisdiction hence quashed. (AY. 2014-15, 2016-17)

Venkateswar Medicare P. Ltd. v. ITO (2024)115 ITR 325 /231 TTJ 791 / 169 taxmann.com 460 (Kol)(Trib)

S. 143(3): Assessment-Limited scrutiny-Assessing Officer cannot travel beyond issue raised under limited scrutiny-Failure to obtain prior permission of Principal Commissioner for such additions-Order is bad in law-Instruction Nos. 5 Of 2016 dt. 14-7-2016 and 20 of 2015, dated 29-12-2015. [S. 45, 48, 54B, 54C, 54D, 54GA, 55A] 1578

Tribunal held that the assessee's case was selected for limited scrutiny. In the course of the assessment proceedings, the Assessing Officer had verified both the issues and was satisfied about the investment in property and also about the deduction claimed under section 54B. No addition on account of both the issues were made. However, by disallowing the fair market value claimed under section 45, the Assessing Officer exceeded the jurisdiction assigned to him under the limited scrutiny assessment and had violated the Central Board of Direct Taxes Instruction Nos. 5 of 2016, dated July 14, 2016 and 20 of 2015, dated December 29, 2015. Section 54B could not be linked with section 48 for enhancement of capital gains under section 45 unless the Assessing Officer had taken the prior permission of the Principal Commissioner, which he had failed to do. The assessment orders passed under section 143(3) is bad in law and the addition made is deleted. (AY. 2014-15)

Ranchhodbhai Jerambhai Meghani v. ITO (2024) 115 ITR 44 (SN) (Rajkot)(Trib)

1579 **S. 143(3): Assessment-Service of notice-Limitation-Assessment completed before the limitation period-Served after limitation period-Order is not time barred. [S. 153, 282,R. 27, General Clauses Act, 1897, S. 27]**

Held that if there is any discrepancy in the address due to which the demand notice along with the assessment order was not served on the assessee, that could only help the assessee claim that the period of limitation for filing the appeal would run from the date of actual receipt of the demand notice or assessment order by the assessee. The Act provides that discrepancy in notices will not affect the proceedings. Therefore, the assessee's contention that the assessment order shall be considered to be passed beyond the prescribed period of limitation is not accepted. Order is not barred by limitation. (AY. 2014-15)

Bando (India) P. Ltd. v. Dy. CIT (2024) 114 ITR 275 / (2025) 233 TTJ 980 (Delhi)(Trib)

1580 **S. 143(3): Assessment--Search and seizure-Undisclosed income-Unaccounted sale receipts-Sale of property-Addition made as percentage of profit on sale receipts-Same receipts cannot be assessed as undisclosed income-Cash deposited in bank-Sale of property-Disclosed in the balance sheet-Addition is deleted. [S. 69, 132]**

Held that the presumption of the Commissioner (Appeals) that no profit rate could be applied on the trading receipts in confirming the addition on a part of the total sale receipts was not justified. He ought to have brought corroborative documentary evidence to disprove the trading receipts shown by the assessee. He allowed the benefit of voluntary disclosure made by the assessee during the search proceedings but ignored the amount of sale found therein, the gross profit on which had already been added by the Commissioner (Appeals). The funds available were explained by the assessee as disclosure made at the time of search and sale receipts declared in the audited balance-sheet showing application of specific percentage profit, which had been accepted by the Assessing Officer and the Commissioner (Appeals). The findings of the Commissioner (Appeals) in confirming a separate addition was perverse to the facts on record as the entire sale receipts stood explained. Held hat the disputed transaction of cash deposit was duly disclosed in the audited books of account as per the balance-sheet, as being from the sale of land, which clearly established that it was a genuine transaction disclosed in the books of account much before the search under section 132 was conducted. The Revenue failed to controvert the fact that there was no physical movement of cash since both parties to the sale transaction had accounts in the same branch of the bank obviating the need to transfer funds from one bank account to another. Order of CIT(A) is affirmed. (AY. 2015-16)

Dy. CIT v. Guru Nanak Milk Products (2024)114 ITR 344 /232 TTJ 325 (Amritsar)(Trib)

1581 **S. 143(3): Assessment-Survey-Agreement for purchase of property-Addition confirmed in the assessment of HUF-Addition is not justified-Advance payment was made in earlier year-Addition is deleted. [S. 133A]**

The Revenue failed to bring on record any corroborative evidence to show that the assessee had invested in any other property other than the property in question. Addition is deleted. Since the addition had already been considered and made in the hands of D HUF, the addition is deleted. (AY. 2007-08)

Darshan Garg v. ACIT (2024) 114 ITR 151 (Amritsar) (Trib)

S. 143(3): Assessment-Search and seizure-Cash deposit in bank-Undisclosed income-Unaccounted sale receipts-Sale Of Property-Addition made as percentage of profit on sale receipts-Further addition on loan and interest is deleted. [S. 132] 1582

Held that the Assessing Officer made the addition purely on presumption and guesswork without any evidence on record. As there was no perversity in the decision of the Commissioner (Appeals), his order was upheld. The funds available were explained by the assessee as disclosure made at the time of search and sale receipts declared in the audited balance-sheet showing application of specific percentage profit, which had been accepted by the Assessing Officer and the Commissioner (Appeals). The findings of the Commissioner (Appeals) in confirming a separate addition was perverse to the facts on record as the entire sale receipts stood explained. (AY. 2015-16)

Dy. CIT v. Guru Nanak Milk Products (2024) 114 ITR 344 /232 TTJ 325 (Amritsar (Trib)

S. 143(3): Assessment-Cash credits-Search and seizure-Assessment of third person-Statement of employees who were not aware of entire business activities-Addition deleted by the CIT(A) [S. 132(4), 133A] 1583

Held, that the cash deposits in the assessee's bank account were out of the cash balance available in the books of account, which was generated from cash sales made by the assessee to its members. Admittedly, the Assessing Officer did not do so. Hence, the Assessing Officer fell into error in relying upon the statements given by the employees of the assessee and another concern, who were not aware of the entire business activities of the assessee as clearly expressed by them in their respective statements. Therefore, the Commissioner (Appeals) is justified in deleting the addition. (AY. 2021-22)

Dy. CIT v. Planet Hollywood India P. Ltd. (2024)114 ITR 22 (SN)(Mum)(Trib)

S. 143(3): Assessment-Validity-Addition on account of bogus LTCG-Addition based on some incriminating material found in a search at premises of third parties-Assessment order should have been framed as per provisions of section 153C-assessment order passed under section 143(3) is set aside being bad in law. [S. 132, 143(1), 153A, 153C] 1584

Assessee filed his return of income for relevant assessment year, which was processed under section 143(1). Assessee challenged the said assessment order on the ground that the same was bad in law in as much as it should have been framed under section 153A read with section 153C as entire assessment was based on outcome of search and seizure proceedings conducted at premises of several stock brokers, whereby it was found that he was also one of the beneficiaries of LTCG earned through manipulation of shares. There was no dispute that entire addition in instant case, was based upon incriminating material/information detected out of search proceedings under section 132 conducted at premises of stock brokers. Therefore, assessment order should have been framed as per provisions of section 153C. Hence, assessment order passed under section 143(3) was set aside being bad in law. [ITA No. 2631/Del/2019, dt. 05/12/2023) [AY. 2014-15]

Shri Rajender Agarwal v. ACIT (Delhi)(Trib)(UR)

1585 **S. 143(3): Assessment-Unexplained investment-Difference between value of closing stock furnished to bank and that shown in books of account-Value in books higher-Higher gross profit offered to tax-No defect pointed out in books of account-No Suppression of profits-Addition is not justified. [S. 69, 145]**
Held that the assessee had submitted the stock statement to the bank whereas the book stock was lower resulting in a difference to the closing stock. However, an addition could not be made on the basis of the closing stock declared in the statement submitted by the banker being less than the book stock. That the Commissioner (Appeals) had held that by showing the valuation of closing stock at a higher amount, the assessee had offered a higher gross profit for taxation and not vice versa, that, therefore, the charge regarding suppression of profit by the Assessing Officer was made without pointing out any defect in the assessee's books of account and also that the manner of making the addition was incorrect. There was no infirmity in the order of the Commissioner (Appeals) deleting the addition. (AY. 2001-02 to 2008-09)
ITO v. M. M. Poonjiaji Spices Ltd. (2024)113 ITR 294 /230 TTJ 312/166 taxmann.com 412 (Mum)(Trib)

1586 **S. 143(3): Assessment-Income from undisclosed sources-Cash deposits in Account-Land aggregator-Failure to response to notice by the builder-Addition is affirmed. [S. 44AD]**
Tribunal held that no substantial evidence produced by assessee to justify transactions. Findings of Commissioner (Appeals) enhancing income is affirmed. (AY. 2010-11)
Amit Kumar Bhati v. ITO (2024)112 ITR 34 (SN)(Delhi)(Trib)

1587 **S. 143(3): Assessment-Income from undisclosed sources-Scrap-Methodology in determination of average sale of scrap per day and making addition is against established trade practices-Deletion of addition is affirmed. [S. 69]**
Held, that there was no logic or methodology in determining the average daily sales and making an addition of Rs. 7,56,000 on account of scrap sales for the last four days. Sale of scrap is a continuous process in a manufacturing industry, the sale of scrap is accounted as and when it is sold. It was against established trade practices to determine the average sale of scrap per day and make an addition thereof, even where scrap is not sold. Accordingly, the order of the Commissioner (Appeals) is affirmed. (AY. 2014-15)
ACIT v. NRB Bearings Ltd. (2024)112 ITR 17 (SN)(Mum) (Trib)

1588 **S. 143(3): Assessment-Search and seizure-Unexplained cash credits-Creditworthiness, genuineness and identity proved-No evidence available for creditors in other assessment years from 2014-15 to 2018-19-Additions are deleted. [S. 68, 132]**
Held that evidence substantially proved that these were companies with substantial holdings, financial capabilities and consequently, their creditworthiness, genuineness and identity stood proved and the addition was not called for. With regard to the loan creditors in respect of other appeals for the assessment years from 2014-15 to 2018-19, there was no evidence available with the Revenue in the form of any statement recorded from any of the directors to controvert the evidence in the form of Income-tax returns, confirmation letters, deduction of tax at source on the interest paid and the interest

income offered by such loan creditors for the relevant assessment years. Therefore, the additions were unsustainable. (AY. 2014-15 to 2020-21)
Bee Pee Rollers P. Ltd. v. Asst. CIT (2024) 110 ITR 402 (Cuttack (Trib)
Bajrangbali Re-Rollers P. Ltd v. Asst. CIT (2024) 110 ITR 402 (Cuttack (Trib)
Bajrangbali Steel Industries P. Ltd v. Asst. CIT (2024) 110 ITR 402 (Cuttack (Trib)

S. 143(3) :Assessment-Protective assessment-Lack of confirmation from parties sourcing funds for land purchase-Subsequent substantive assessment in hands of payers becoming final-Addition of same amount in hands of assessee is invalid. [S. 69C, 153A] 1589
Held that the additions made in the hands of the beneficiary company in various assessment years were on substantive basis, as affirmed by the Commissioner (Appeals) whereas the additions made on the assessee-company were on protective basis, and were deleted on the ground that the substantive additions were sustained. Accordingly, the addition made on protective basis in the hands of Suresh Kumar Agarwal could also not be sustained. The Assessing Officer was directed to delete the addition. (AY. 2011-12 to 2014-15)
Bhavesh Commotrade P. Ltd. v. Dy. CIT (2024) 110 ITR 180 / 231 TTJ 641 (Ranchi)(Trib)
ACIT v. Suresh Kumar Agarwal (2024)) 110 ITR 180 / 231 TTJ 641 (Ranchi)(Trib)

S. 143(3): Assessment-Income from undisclosed sources-Sundry creditors-No discrepancy in purchase of gods or payment-Purchases and sales accepted-Entire addition of opening balance in sundry creditors is deleted. [S. 133(6), 143(2)] 1590
Held that there was no discrepancy in the purchase of goods or payment. Only the opening balance was added to the total income of the assessee. The Tribunal in the assessee's own case had held in his favour. The purchases and sales of the assessee during the assessment year were accepted by the Assessing Officer. There was no contrary order of earlier years where the sundry creditors or purchase had been rejected by the Assessing Officer. Only the cross verification under section 133(6) being in dispute, could not be good reason for rejection of sundry creditors. The entire addition was unjustified considering the submission of the assessee, filed before both the lower authorities. The entire addition is deleted. (AY. 2013-14)
Rameshwar Shaw v. ITO (2024)110 ITR 33 (SN) (Kol)(Trib)

S. 143(3):Assessment-Revision order is quashed by Tribunal-Assessment order became infructuous. [S. 143(3), 254(1)] 1591
Order passed under section 263 is quashed by the Tribunal. Once order under section 263 had been quashed, then assessment order passed under section 143(3) read with section 263 in pursuance of section 263 order would become infructuous. (AY. 2015-16)
ACIT v. Tata Housing Development Company Ltd. (2024) 207 ITD 141 (Mum) (Trib.)

S. 143(3): Assessment-Transport agent-Failure to submit necessary details-Suffering from cancer-Matter remanded to the file of the Assessing Officer-Delay in filing the appeal is condoned. [S. 44AB. 251(1)(a), 254(1)] 1592
Held that the assessee was suffering from cancer and therefore, could not produce the required factual detail before the authorities below and requested the matter be

restored to the files of the Assessing Officer for assessment de novo. Under such facts and in the circumstances, since the actual facts of the issue were not available before the authorities, the decisions taken by the authorities were based on their own assumptions, though the assessee was also non-compliant and negligent in offering the proper response before the authorities. In the interest of substantial justice and as requested by the assessee which was not opposed by the Revenue, the appeal should be restored to the files of the Assessing Officer for fresh adjudication giving reasonable opportunity of being heard and to produce all the necessary information and evidence. (AY. 2006-07, 2007-08)
Durgesh Pandey v. ITO (2024)109 ITR 66 (SN)(Raipur) (Trib)

1593 **S. 143(3): Assessment-Limited scrutiny-Huge expenditure Failure to submit proof-Matter restored to Assessing Officer for de novo consideration-Delay in filing of appeal is condoned. [S. 143(3), 251(1)(a), 254(1)]**
Held, that the additions had been made for want of proper explanation from the assessee. Before the authorities, the assessee had not represented its case in terms of notice issued by the authorities. Accordingly, the issue was restored to the Assessing Officer for a de novo consideration and decision in accordance with law after providing reasonable opportunity to the assessee. The assessee was directed to comply with the notices issued by the Department with necessary evidence in support of its case and also to intimate the correct email-id and communication address and telephone/mobile number of the assessee to the Department and not to seek unnecessary adjournment for early disposal of the case. Delay in filing the appeal is condoned. (AY. 2016-17)
M. S. Sorters P. Ltd. v. Asst. CIT (2024)109 ITR 24 (SN)(Bang)(Trib)

1594 **S. 143(3) : Assessment-Document Identification Number (DIN)-Reassessment-Search-Reassessment order passed without mentioning DIN number is invalid-Order is set aside. [S. 69C, 143(3), 147, 148, 153C, 292B]**
The assessment was completed under section 143(3) of the Act. Subsequent to search, reassessment notice u/s 148 was issued. The assessee filed the return. The assessment was completed by making addition under section 69C of the Act. CIT(A) affirmed the addition. On appeal the assessee contended that order was passed without mentioning of DIN on assessment order hence bad in law. Allowing the appeal the Tribunal held that any communication relating to assessment, appeals, orders, etc. albeit without DIN can have no standing in law having regard to Circular no. 19/2019, dated 14-8-2019. An assessment order and notice of demand are two separate communications qua assessee and carry separate physical existence and identity, even though issued on same date by same Assessing officer pertaining to same assessment year and therefore, necessarily have to carry separate DIN on body of said communications. Assessment order and notice of demand are two separate communications qua assessee and carry separate physical existence and identity, even though issued on same date by same Assessing Officer pertaining to same assessment year and therefore, necessarily have to carry separate DIN on body of said communications. Where notice under section 148, supply of reasons for initiating proceedings under section 148 to assessee, order disposing off objections, notice under section 143(2), subsequent notices under section 142(1) had been issued electronically due mentioning DIN Number generated through ITBA portal

on each of such communication, however, reassessment order had been issued without mentioning DIN on body of said communication, there being partial non-compliance of CBDT Circular No. 27/2019 by Assessing officer while conducting reassessment proceedings electronically, reassessment order would be invalid and deemed to have been never issued. Order is set aside. (AY. 2012-13)
SPS Structures Ltd. v. DCIT (2024) 204 ITD 716 / 112 ITR 465/ 227 TTJ 771 (Chd) (Trib.)

S. 143(3): Assessment-Document Identification No (DIN)-No DIN number was mentioned in the assessment order-Assessment order is invalid-Subsequent separate communication of DIN would be a superfluous exercise. [S. 119] 1595

Tribunal held that as per CBDT Circular No. 19/2019, dated 14-8-2019, no communication shall be issued by any income-tax authority relating to assessment, appeals, orders, statutory or otherwise, exemptions, enquiry, investigation, verification of information, penalty, prosecution, rectification, approval etc., to assessee or any other person, on or after 1-10-2019, unless a computer generated DIN has been allotted and is duly quoted in body of such communication. If an assessment order is passed without mentioning DIN, same would be invalid and shall be deemed to have never been passed. Assessing Officer's order showed that in body of Assessing Officer's order, no DIN number was mentioned nor there was any reason of not mentioning DIN number, Assessing Officer's order was invalid and shall be deemed to have never been passed. Subsequent separate communication of DIN would be a superfluous exercise. Followed, *CIT v. Brandix Mauritius Holdings Ltd (2023) 293 Taxman 285/ 456 ITR 34 (Delhi)(HC)* (AY. 2015-16)
Harjeet Singh v. ACIT (2024) 204 ITD 572/207 TTJ 275 (Delhi) (Trib.)

S. 143(3): Assessment-Search-Income to be taxed in the hands of key person-Matter remanded. [S. 132, 153A] 1596

The key person of the group managed all financial affairs and he was responsible for earning the undisclosed income emerged from the seized materials, all the transactions, which did not belong to any specific group were to be considered in his hands. Therefore, the Order of CIT(A) was to be set aside and the issues restored to the Assessing Officer for fresh adjudication after considering the order passed by Settlement Commission. (AY. 2017-18)
Shiv Cotex India P. Ltd. v. Dy. CIT [2024] 109 ITR 594 (Delhi)(Trib)

S. 143(3): Assessment-Revised return-Mistake being of punching error-Correct income be taxed. [S. 139(1), 139(5)] 1597

The appellant filed its original return of income in February 2015 declaring income at Rs. 1,28,42,730/-. Thereafter, on very next day, it filed revised return of income declaring total income at Rs. "NIL". The CIT(A) observed that the correctness of the revised computation statement had not been questioned by the Assessing Officer and in the interest of substantial justice only correct income should be taxed. On Appeal, the Tribunal held that the mistake being as a result of punching error the decision of CIT(A) was to be upheld. (AY. 2014-15)
ITO v. Vikunj Enterprises P. Ltd. [2024] 109 ITR 517 (Mum)(Trib)

1598 **S. 143(3): Assessment-Survey-Statements recorded lack evidentiary value and cannot be relied upon as substantive evidence. [S. 133A]**

The assessee, a partnership firm engaged in the business of construction and development of residential flats and shops, filed its return of income declaring its total income for the assessment year. A survey action under section 133A of the Income Tax Act, 1961 (the Act) was conducted in the business premises of the assessee, during which statements of two partners were recorded, wherein they admitted a profit element in respect of different construction projects carried out by the assessee firm. Later, the partners retracted their statements by way of an affidavit, describing the loose papers found during the survey as dumb documents. The Assessing Officer (AO) rejected the retraction and made an addition, as the undisclosed income of the assessee. The assessee appealed before the Commissioner of Income Tax (Appeals) (CIT(A)), who estimated the gross profit of the assessee at 12. 5% and directed the AO to reopen the assessments for the assessment years 2009-10 to 2016-17 and give telescopic effect to the income of the assessee. The Revenue challenged the order of the CIT(A) before the Tribunal. The Tribunal dismissed the appeal of the Revenue and upheld the order of the CIT(A). The Tribunal held that the AO was not correct in making the addition to the extent desired as the undisclosed income of the assessee, based on the statements recorded under section 133A of the Act, had no evidentiary value and were retracted by the assessee. The Tribunal also held that the CIT(A) had made a thorough analysis of the income of the assessee project-wise and estimated the gross profit at 12. 5%, which was reasonable and did not require any interference. The Tribunal further held that the CIT(A) had rightly given direction to the AO to reopen the other assessment years and recompute the income of the assessee by giving telescopic effect, as per the provisions of section 147(1) of the Act. (AY. 2014-15)

ITO v. Shubh Developers [2024] 109 ITR 61 (SN.)Ahd) (Trib)

1599 **S. 143(3) : Assessment-Document Identification Number-Order without DIN-Order is set-aside. [S. 153C]**

Where the assessment order passed by Assessing Officer did not bear any DIN in terms of CBDT Circular No. 19, dated 14-8-2019 (2019 416 ITR 140 (St.) the assessment order was to be set aside (AY. 2015-16)

Sharda Devi Bajaj (Smt.) v. Dy. CIT [2024] 109 ITR 131/ 204 ITD 302 (Delhi)(Trib)
Sundar Lal Bajaj v. Dy. CIT [2024] 109 ITR 131/ 204 ITD 302 (Delhi)(Trib)
Sundar Lal Bajaj, HUF v. Dy. CIT [2024] 109 ITR 131/ 204 ITD 302 (Delhi)(Trib)

1600 **S. 143(3) : Assessment-Document Identification Number-Order passed manually without DIN, assessment order was to be treated as never been issued. [S. 271(1)(c)]**

The Hon'ble Tribunal held that the assessment orders and the penalty orders were invalid and non-est in the eye of law, as they did not comply with the mandatory requirements of the CBDT Circular No. 19/2019. The bench relied on the decision of the Delhi High Court in *CIT (International Taxation) v. Brandix Mauritius Holdings Ltd.*, which held that any communication issued by the revenue without DIN, except in the circumstances specified in the CBDT Circular, would be treated as non-est in law and would not confer any jurisdiction on the revenue to make any assessment or levy

any penalty. The bench also observed that the revenue had not shown any exceptional circumstances or approval for issuing the orders manually without DIN, as required by the CBDT Circular. The bench quashed the assessment orders and the penalty orders and allowed the appeals of the assessee. (AY. 2007-08, 08-09, 09-10, 12-13, 2013-14.)
Sad Bhawna v. Dy. CIT [2024] 109 ITR 45 (SN) / 204 ITD 785 (Delhi)(Trib)

S. 143(3): Assessment-Person-Amalgamation-The amalgamation of the assessee company with another entity leads to the cessation of the assessee company's status as a legal entity under section 2(31) of the Act-Substantive illegality and not a procedural violation-Order is invalid. [S. 2(31)] 1601

The Hon'ble Tribunal quashed the assessment order passed by the AO in the name of a non-existent entity, following the principles laid down by the Supreme Court in similar cases. The judgement held that the amalgamation of the assessee company with another company resulted in the cessation of the assessee company as a person under section 2(31) of the Act, and hence it could not be subjected to assessment proceedings or an order of assessment. The judgement rejected the argument of the revenue that the assessee company had participated in the proceedings and hence could not raise the issue of its non-existence, as it was a substantive illegality and not a procedural violation. Order is invalid. (AY. 2011-12)
Solvent Real Estate P. Ltd. v. ITO [2024] 109 ITR 52 (SN.) (Kol) (Trib)

S. 143(3) :Assessment-Signing of an assessment order by Assessing Officer is a mandatory-Not curable procedural defect-Unsigned assessment order is invalid. [S. 282(2) 282A, 292B, Rule 127A, Code of Civil Procedure 1908, Order-XX Rule 3] 1602

The assessment order was served on assessee through designated e-mail ID of the AO. The draft assessment order was signed and the final order was not signed. Additions made in the draft assessment order and final assessment order is the same. The assessee challenged the assessment order on the ground that unsigned assessment order was served on assessee hence the order is in valid. On appeal the Tribunal held that signing of an assessment order by the AO is a mandatory requirement and not merely a procedural formality. Since the assessment order communicated to the assessee originated from the designated e-mail ID of the AO therefore, in terms of rule 127A the said document shall be deemed to be authenticated. The unsigned assessment order served on the assessee is held to be invalid and quashed. Referred, *Kilasho Devi Burman (Smt) v. CIT (1986) 219 ITR 214 / 85 Taxman 346 (SC), Vijay Corporation v. ITO (2012) 18 taxmann.com 88/ 50 SOT 33(URO) (Mum)(Trib), Yeshoda Electricals v. ACIT (ITA No. 1175 / 2016 dt 3-2-2021 (Bang)(Trib)* (AY. 2015-16)
Reuters Asia Pacific Ltd. v. DCIT(IT) [2024] 205 ITD 31/ 228 TTJ 165 /110 ITR 609 (Mum (Trib)

S. 144 : Best judgment assessment-Undisclosed income-Machinery shown in the balance sheet-Failure to explain the source of investment-Addition as undisclosed income is held to be justified. [S. 69, 119, 143(2), 260A] 1603

The Assessing Officer had made an addition on account of unexplained income on the ground that plant and machinery shown in the balance sheet on 31-3-2004 was to the

tune of Rs. 21.58 lakhs whereas the same was shown as Rs. 34.87 lakhs as on 1-4-2004. Additionally, he made an addition of Rs. 6.99 lakhs on account of plant and machinery added as income from undisclosed source. CIT(A) and Tribunal affirmed the order of the AO. On appeal the assessee contended that the assessment order was framed in violation of the CBDT guidelines. Court held that BDT promulgated procedure for selection of returns/cases of non-corporate assessees for scrutiny during the financial year 2006-07. From a bare reading of paragraph No. 2 of the procedure laid down by the CBDT for selection of returns/cases for the financial year 2006-07, it is evident that paragraph 2 only casts an obligation on the Assessing Officer to compulsorily scrutinize the cases covered by Clauses (a) to (s) of paragraph No. 2. The CBDT circular laying down procedure aforesaid does not and cannot take away the power and jurisdiction of the Assessing Officer conferred upon it under section 143(2). The first appellate authority and the second appellate forum have rightly concurred with the view of the Assessing Officer and upheld the additions made on account of fixed assets. No question of law arises. (AY. 2005-06)

Reshi Construction Company v. CIT (2024) 340 CTR 513 / 241 DTR 361 / 167 Taxmann.com 47 (J&K)(HC)

1604 **S. 144 : : Best judgment assessment-Reassessment-Schedule Tribes-Investment in mutual funds-Return not filed-Not responded to the notice-Alternative remedy-Writ petition is dismissed. [S. 10(26), 139(1), 139(4C), 147, 148. Art. 226]**

Assessee did not file its return of income claiming that being a member of a scheduled tribe and deriving income exclusively within a notified area, she was entitled to full exemption of income under section 10(26) of the Act. The assessee has not responded various notices issued by the Revenue. The AO passed an order under section 144 of the Act. Assessee filed writ petition against said order. On writ the dismissing the petition the Court held that there is no violation of principle of natural justice. This is a case where an arrogant assessee refused to comply with every request of department and only suggested that since she was a member of scheduled tribe, she was willy-nilly above law. It was also not a case of authority having been exercised without jurisdiction. Court held that neither conduct nor alleged prejudice suffered by assessee prompt Court to exercise any discretion to receive matter and adjudicate same without leaving assessee free to approach regular statutory remedy in accordance with law. Writ petition is dismissed. (AY. 2013-14)

Ramona Massar v. UOI (2024) 470 ITR 239/152 taxmann.com 230 (Meghalaya) (HC)

1605 **S. 144 : Best judgment assessment-Shift of business premises-Notices were served on old address-Matter remanded to the file of the Assessing Officer, who shall pass final assessment orders on merits after giving a reasonable opportunity of hearing. [S. 143(3), Art. 226]**

Against the ex parte order the Assessee filed writ petition challenging assessment orders on the ground that the business premises was shifted to some other place and notices that were attempted to be served at old address remained unserved and, therefore, no reply was given before assessment orders came to be passed. Allowing the petition the Court held that the assessee was to be given an opportunity to file reply to notices that

preceded respective assessment orders and thereafter Assessing Officer shall pass final assessment orders on merits. (AY. 2018-19 & 2019-20)(SJ)
Senthil Trading and Co. v. Assessing Officer (2024) 300 Taxman 511 (Mad.)(HC)

S. 144 : Best judgment assessment-Ex parte assessment made on the basis of FIR filed by daughter in law-AO having not conducted an independent investigation or brought on record evidence to the effect that the assessee has actually earned the assessed income during the relevant year-Ex-parte order is quashed and set aside. [S. 143(3), 147, 148, IPC, 406, 498A, Art. 226] 1606

The Assessing Officer passed the assessment order on the basis of the FIR lodged by the daughter of the assessee under S.. 406, 498A, etc. of IPC against her in-laws. In the FIR, it was recorded that the assessee has spent a sum of Rs. 8 lacs apart from giving other articles at the time of marriage. Respondent-IT Department on the basis of aforesaid FIR initiated proceedings against the assessee alleging that he has concealed his income. At the time of passing of the orders, the assessee was in a vegetative state and he could not participate in the assessment proceedings. Respondent-Department was duly intimated about the health of the assessee still ex parte assessment order was passed. FIR stands quashed by this Court on the basis of compromise arrived at between the parties and there is no finding by Criminal Court to the effect that assessee had given/spent a sum of Rs. 30 lakhs on the occasion of marriage of his daughter. On writ the Court held that Respondent-Department concededly has neither conducted independent investigation nor brought on record evidence to the effect that the assessed actually earned the assessed amount during the relevant assessment year. In the absence of any concrete evidence, demand cannot be created on assumptions and presumptions. Order and all subsequent demand notices are set aside.
Mohinder Singh v. ITO (2024) 339 CTR 486 (P&H) (HC)

S. 144 : Best judgment assessment-Books are rejected-Order has to be passed under section 144-Order passed under section 153A is not valid-Addition is deleted. [S. 132, 145(3), 153A] 1607

Held that if the books are rejected, it is mandatory to complete the assessment u/s 144. The order passed u/s 153A of the Act is not valid accordingly the addition is deleted. (AY. 1998-99)(ITA. Nos. 429 to 423 /JP/ 2024 dt. 1-8-2024)
Govindam Export v. DCIT (2024) Chamber's Journal-September-P. 110 (Jaipur)(Trib)

S. 144: Best judgment assessment-Ex-parte order-Agricultural Income-Remand report –Matter remanded to the Assessing Officer to pass a fresh assessment order after granting an reasonable opportunity of hearing. 1608

Tribunal held that the assessee had not supported his case before the Assessing Officer. Therefore, the order passed by the Commissioner (Appeals) is set aside and the matter remanded to the Assessing Officer with instructions to pass a fresh assessment order after providing a reasonable opportunity for the assessee to be heard. (AY. 2011-12)
Dnyaneshwar Baburao Kathe v. ITO (2024)116 ITR 19 (SN)/ [2025] 210 ITD 85 (Pune) (Trib)

1609 **S. 144 : Best judgment assessment-Principle of natural justice-Travelling expenses-Purchase of car-Matter restored to the Assessing Officer to examine evidence filed on record and adjudicate de novo. [S. 147, 148]**
The Tribunal has remanded the matter to the Assessing Officer, on the grounds of natural justice, the issues to examine the evidence filed on record and to adjudicate de novo. (AY. 2016-17)
Shriraja Zahoor Khan v. Dy. CIT (2024) 115 ITR 14 (SN)(Amritsar) (Trib)

1610 **S. 144 : Best judgment assessment-Development of property-Housing project-Work-in-progress-Prescribed Accounting Standards-Addition made on estimated value, without substantial evidence to contradict actual cost recorded is not Justified. [S. 142A, 145(3)]**
Held that the addition is made on the estimated value, without substantial evidence to contradict the actual cost recorded by the assessee, which was not justifiable. That the District Valuation Officer had submitted a letter clarifying that he had not withdrawn the certificate and its correctness should not be doubted. Neither the Assessing Officer nor the Commissioner (Appeals) had taken into consideration this letter by the valuer which was a basis for referring the valuation to the District Valuation Officer. The addition based on the estimated cost, without discrediting the actual costs recorded, is not justifiable. (AY. 2013-14, 2014-15)
Shri Hari Corporation v. Dy. CIT (2024)113 ITR 49 (SN) (Ahd)(Trib)

1611 **S. 144 : Best judgment assessment-Bogus purchases-Information from Sales tax Department-Sales not doubted-Disallowance of 4 % of purchases is considered as fair-Delay of 10 days is condomed. [S. 254(1)]**
Held that the assessee had produced a copy of the purchase register, sale register, ledger purchase invoices, stock movement, copy of bank statement, to prove the genuineness of the purchases. The Assessing Officer had not doubted the corresponding sales made by the assessee. If such purchases were treated as not genuine, the corresponding sales should also have been considered as not genuine. Only the profit margin embedded in such transactions could have been taxed. Since the sales were not doubted, it was proved that the assessee was actually in possession of goods. The assessee had been benefitted by receiving a margin from the grey market. The addition to the extent of the profit element embedded in the amount of purchases made from the party was to be added. The disallowance in the case of the assessee to the extent of 4 per cent. of the purchases made by the assessee from the party would be fair and reasonable. (AY. 2011-12)
JMD Corporation of India Ltd. v. ITO (2024)109 ITR 485 (Mum)(Trib)

1612 **S. 144B : Faceless Assessment –Cash credits –Un secured loan-No opportunity of cross examination is provided-Assessment order is set aside. [S. 68, 133(6), Art, 226]**
Assessing Officer passed assessment order making addition of certain as cash credits. The Assessing Officer did not supply copy of reply received from 17 parties, pursuant to notice issued under section 133(6). After issuance of show cause notice in form of draft assessment order, no any opportunity of cross-examination of parties whose replies were considered to make addition under section 68 was granted to assessee. On writ

the Court held that the assessment is quashed and set aside and direction is issued to pass an order by providing an opportunity of cross-examination to assessee, if requested. Matter remanded. (AY. 2022-23)
MAA Padmavati Exports v. ITO (2024) 471 ITR 683/ 163 taxmann.com 605 (Guj) (HC)

S. 144B : Faceless Assessment-Inability to participate in video conference-Natural justice-No fault of the assessee-Matter remanded to the Assessing Officer to pass a speaking order after giving a reasonable opportunity of hearing. [S. 143(3), 144, Art. 226] 1613
Court held that the assessee could not participate in the hearing due to inability to get link of video conference. The assessment order is set aside to pass a fresh speaking order after giving opportunity of hearing to the assessee. (SJ)
Anuj Bakshi v. ACIT (2024)471 ITR 446 (Cal) (HC)

S. 144B : Faceless Assessment –Pendency of appeal before CIT(A)-Direction is issued to the appellate authority to pass an appropriate order on the merits and in accordance with law, after affording an opportunity of personal hearing to the assessee within a period of twelve weeks. [S. 144B(1) (xii), 246A, Art. 226] 1614
The assessee filed a writ petition challenging the assessment order on the grounds that it travelled beyond the scope of show-cause notice thereby violating the provisions of section 144B(1)(xii) of the Income-tax Act, 1961. The court held that there is no extraordinary circumstance to intervene with the assessment order and that it was for the assessee to pursue the statutory appeal which he had already filed and dismissed the writ petition and made observation that while considering the assessee's appeal the CIT(A)) is directed to pass an appropriate orders on the merits and in accordance with law, after affording an opportunity of personal hearing to the assessee within a period of twelve weeks. (AY. 2021-22)
Shapoorji Pallonji Solar Holdings Pvt. Ltd. v. ITO(No. 2) (2024)470 ITR 142 (Mad) (HC)
Editorial : Shapoorji Pallonji Solar Holdings Pvt. Ltd. v. ITO(No. 1) (2024)470 ITR 139 (Mad) (HC)

S. 144B: Faceless Assessment-Show cause notice providing 3 days' time to file reply is in violation of SOP issued by CBDT as well as principals of natural justice-Matter remanded back to the Faceless Assessment unit. [S. 143(3), 144B(6), Art. 226] 1615
In this case the Hon'ble Court held that Faceless Assessment Unit is required to adhere to principles of natural justice and to provide reasonable opportunity. Specific time lines provided under the SOP issued by CBDT are required to be followed. Hence, the show cause notice providing less than 3 day's time to file reply is contrary to the SOP issued by CBDT and also in violation of principals of natural justice. Matter remanded back to the Faceless Assessment unit. (AY. 2022-23) (SJ)
Lake Gardens Saha Education Society v. Assessment Unit, ITD, NAFAC (2024) 301 Taxman 56 (Cal.)(HC)

1616 **S. 144B: Faceless Assessment-Show cause notice along with draft assessment order-Assessment order passed without consideration the adjournment application filed online-Against the principals of natural justice-Order is quashed and set aside-Matter is remanded back. [S. 143(3), 144B(1) (vii), Art. 226]**
Hon'ble High Court was pleased to quash the assessment order passed as the same was passed in breach of principal of natural justice without considering the adjournment application filed and thus, without providing the assessee an appropriate opportunity of being heard. Order is quashed and set aside. Matter is remanded back. (AY. 2022-23)
Kaypee Enterprise v. Asst. Unit, ITD (2024) 301 Taxman 73 (Guj.)(HC)

1617 **S. 144B : Faceless Assessment –Principle of natural justice-Failure to issue show cause notice-order of assessment was to be quashed and matter was to be remanded back to stage of issuance of show cause notice by Assessing Officer to assessee so as to enable assessee to request for personal hearing. Matter remanded. [S. 144(8), Art. 226]**
On writ allowing the petition the Court held that the Assessing Officer had committed fragrant breach of principle of natural justice by not issuing show-cause notice indicating reasons for proposed additions/disallowance along with necessary evidence forming basis of same, there was breach of principles of natural justice and thus order of assessment was to be quashed and matter was to be remanded back to stage of issuance of show cause notice by Assessing Officer to assessee so as to enable assessee to request for personal hearing. Matter remanded. (AY. 2021-22)
Inox Wind Energy Ltd. v. ACIT (2024) 301 Taxman 557 (Guj.)(HC)

1618 **S. 144B : Faceless Assessment –Principle of natural justice-Failure to grant personal hearing-Video conferencing-Matter is remanded back to Assessing Officer to pass a fresh de novo order after giving personal hearing to assessee through video conferencing. [Art. 226, 227]**
Assessee logged into portal for personal hearing through as scheduled but no one appeared on behalf of revenue. Assessee prayed for another opportunity of personal hearing which was not granted and Assessing Officer passed assessment order. On writ the Court held that since no personal hearing through video conferencing was granted though it was scheduled, there was a breach of principles of natural justice. Therefore, matter is remanded back to Assessing Officer to pass a fresh de novo order after giving personal hearing to assessee through video conferencing.
Premanand Kumar Ambalal Patel v. ACIT (2024) 301 Taxman 596 (Guj.)(HC)

1619 **S. 144B : Faceless Assessment –Personal hearing-Mere creation of video conferencing meeting ID/Link does not absolve Faceless Assessment Unit from discharging its responsibility of offering personal hearing and meeting ID/Link is required to be disclosed/shared, for assessee to log in to said ID/Link, for ensuring compliance of statutory provision of personal hearing as provided for in section 144B(6)(viii)-Assessment order is set aside and matter was remanded back to the Assessing Officer. [S. 144B(6)(viii), Art. 226]**
Assessee had applied for an opportunity of personal hearing and same was also approved by Faceless Assessment Unit but V. C. Link had not been shared to assessee

and meanwhile assessment order was passed, determination made by Faceless Assessment Unit stood vitiated from stage of not affording assessee opportunity of personal hearing and thus, assessment order is set aside and matter was remanded back. Faceless Assessment Unit is directed to share on the portal a video conferencing link and upon giving an opportunity of hearing to the petitioner, decide the matter afresh from the stage of affording personal hearing, within a period of 8 weeks from the date of communication of this order. (AY. 2022-23)
Phari Projects (P.) Ltd. v. ITO (2024) 300 Taxman 268 (Cal.)(HC)

S. 144B : Faceless Assessment –Principle of natural justice-Statutory mandate-Failure to grant seven days time to respond to show-cause notice-Proposing variation in income and afford personal hearing-Failure to give video conference-Matter remanded. [S. 143(3), 144B(6)(vii), Art. 226] 1620
Allowing the petition the Court held that since the request for video conferencing was made by the assessee, it was mandatory for the National Faceless Assessment Centre to accede to it in terms of section 144B(6)(viii). The Act expressly provided for the concerned assessment unit to afford the assessee an opportunity of hearing. Order is set aside. The Assessing Officer is directed to pass the order by giving a reasonable opportunity of hearing. Referred *C. B. GAUTAM v. UOI(1993) 199 ITR 53(SC) (1993) 1 SCC 78* wherein the Constitution Bench of the Supreme Court has observed that even where the statute does not provide for an opportunity to be heard, it is one of the principles of natural justice. (AY. 2022-23)
Global Vectra Helicorp Ltd. v. NFAC (2024)467 ITR 172/ 162 taxmann.com 274 (Delhi)(HC)

S. 144B : Faceless Assessment-Opportunity of hearing-Principle of natural justice-Opportunity of personal hearing was not given-Order of single judge rejecting the petition is quashed and set aside. [Art. 226] 1621
The assessee was directed to file reply to the show-cause notice on or before 9th Sept., 2022, it gave the reply to the 1st respondent on 14th Sept., 2022. In its reply, the assessee not only pointed out its objections to the facts stated in the show-cause notice but also requested an opportunity for a personal hearing through video conferencing. Even though the 1st respondent received the reply well in advance, he did not consider the same at all while passing the assessment order. No opportunity for personal hearing as requested was given. There is a clear violation of the principles of natural justice. Hence, the assessment order is not sustainable. Order is set aside and the 1st respondent is directed to redo the assessment taking into account the bifurcation of interest component shown in the reply and also giving an opportunity for personal hearing to the assessee. (AY. 2020-21)
Wadakkancherry Service Co-Operative Bank Ltd. v. ITO (2024) 338 CTR 750 (Ker) (HC)
Editorial : Order of single judge is set aside, Wadakkancherry Service Co-Operative Bank Ltd. v ITO (2024) 338 CTR 752 (Ker) (HC)

1622 **S. 144B : Faceless Assessment-Circulars and instructions of Central Board Of Direct Taxes-Notice must be given for proposed additions along with necessary evidence. [S. 119, 144B(8), Art. 226]**

Allowing the petition the Court held that the Assessing Officer had committed flagrant breach of the principles of natural justice by not issuing a show-cause notice indicating the reasons for the proposed addition or disallowance along with the necessary evidence forming the basis thereof and, therefore, the assessment order had to be quashed and set aside. Circular No. 27 of 2019 ([2019] 417 ITR (St.) 68). (AY. 2021-22)

Inox Wind Energy Ltd. v. ACIT (2024)466 ITR 463 (Guj)(HC)

1623 **S. 144B : Faceless Assessment –Proposed variation in income-Standard operating procedure-Order shall not be passed prior to expiry of seven days from date of issuance of show-cause-Violation of principles of natural justice-Assessment order and consequential notices of demand and penalty set aside-Matter remanded. [142(1), 143(3), 144B(6)(vii), 156, 272A(1)(d), 274, Art. 226]**

Allowing the petition the Court held that despite the Department affording an opportunity to the assessee to make a request for personal hearing by clicking the "Seek Video Conferencing" button available against the notice in the view notices section of the e-proceeding tab, on e-filing portal, no such button was clicked by the assessee within the time specified in the notice. On this context, the time provided to the assessee was adequate enough. The request made by the assessee for personal hearing in the earlier response could not have mandated the Department to give personal hearing to the assessee without the assessee applying for personal hearing in the manner prescribed on the portal. If the assessee had failed to take such opportunity, the Department could not be made responsible therefor. But similar conclusion could not be drawn while considering whether appropriate opportunity of hearing was given to the assessee to respond to the notice, which proposed the variations and wherein the digital signature showed that it was signed in the evening on March 15, 2024, which was a Friday and the assessee was required to respond to it before 11 a.m. of March 19, 2024 giving an inadequate time of one working day to respond. The limitation period would end on March 31, 2025 and there being no urgency, the Assessing Officer had acted in derogation of the Standard Operating Procedure issued by the Commissioner. Therefore, there was violation of principles of natural justice, inasmuch as, the assessee was prevented from appropriately responding to the notice. That though the Assessing Officer had passed the order under section 143(3) read with section 144B beyond the period of seven days from the date of issuance of notice, there was nothing on record to show that any notice was given to the assessee intimating that the order should not be passed prior to the expiry of the period of seven days. The order passed by the Assessing Officer for the assessment year 2022-23, being in violation of principles of natural justice was vitiated and therefore, set aside. The consequent notice of demand under section 156 and the notices of penalty under sections 272A(1)(d) and 274B were also set aside. The matter was remanded back to the Assessing Officer. The Department was directed to activate the portal for the assessee to submit her response since she had already received the notice and to express her option of personal hearing. In the event

of the assessee's failure to respond within the stipulated time, the Department was given liberty to proceed in accordance with law. (AY. 2022-23)(SJ)
Monika Jaiswal v. UOI (2024)466 ITR 488/300 taxman 206 (Cal)(HC)

S. 144B : Faceless Assessment-Principle of natural justice-Alternative remedy-Assessment order is set aside. [143(3), 144B(6)(viii), Art. 226] 1624
Allowing the petition, that since the assessee did not get opportunity to respond to the additional show-cause notice, there was violation of the principles of natural justice and the assessee could not be relegated to pursue the statutory remedy as the defect could not be cured by affording opportunity to the assessee to prefer appeals. The assessee claimed that despite logging in to join the meeting virtually, the Faceless Assessment Unit did not join. Although it had been recorded by the Faceless Assessment Unit in its order dated March 21, 2024 that the assessee despite being afforded an opportunity to join the virtual meeting it did not join, it was not necessary to consider such issue since the assessment order passed under section 143(3) read with section 144B by the Assessing Officer or Faceless Assessment Unit was vitiated for violation of principles of natural justice. Whether or not the second or additional show-cause could be issued would fall for consideration only when a response was offered by the assessee but there was no contemporaneous response on record. Though the standard operating procedure circulated by the Commissioner, National Faceless Assessment Centre, Delhi, dated August 3, 2022 did not have a statutory force, the National Faceless Assessment Unit could neither feign ignorance nor disregard it. The assessment order passed under section 143(3) read with section 144B by the Faceless Assessment Unit was unsustainable and accordingly set aside. The matter was remanded to the Faceless Assessment Unit with a direction to permit and enable the assessee to file its response to the additional show-cause notice. Consequently, the notice issued under section 274 read with section 271AAD(1)(i) and the notice for penalty under section 274 read with section 271B were quashed. Matter remanded. (AY. 2022-23)
Sitaram Shyam Sundar Fashions Pvt. Ltd. v. UOI (2024)466 ITR 231/300 Taxman 142 (Cal)(HC)

S. 144B : Faceless Assessment-Approval of Resolution Plan under Corporate Insolvency Resolution process-Subsequent notice Under Section 144B is not valid. [Insolvency And Bankruptcy Code, 2016, S. 31(1), Art. 226] 1625
Allowing the petition the Court held, that the resolution professional appointed pursuant to the commencement of the corporate insolvency resolution process, on November 23, 2020, informed the Income-tax authorities of the pendency of proceedings before the National Company Law Tribunal. This was followed by a communication dated January 28, 2021 in terms of which the resolution professional had conveyed a request to the Income-tax authorities to lodge their claims in accordance with the provisions of the Insolvency and Bankruptcy Code. The assessee, the corporate debtor, in terms of the provisions of the Act, had furnished its return of income for the assessment year 2021-22 on March 10, 2022. The corporate insolvency resolution process proceedings culminated in the approval of the resolution plan being approved by the National Company Law Tribunal on March 15, 2022 and accepting a plan submitted by S which

had been accepted by the committee of creditors. It was only thereafter on June 27, 2022 that the Department chose to commence proceedings referable to section 144B of the Act. The notices dated June 27, 2022, June 28, 2022 and September 5, 2022 is quashed. (AY. 2021-22)
M Tech Developers Pvt. Ltd. v. NFAC (2024)465 ITR 60/161 taxmann.com 736 (Delhi)(HC)

1626 **S. 144B : Faceless Assessment-Draft assessment order is not passed-Violation of principle of natural justice-Order is quashed and set aside. [Art. 226]**
Allowing the petition the Court held that the order was passed by the respondent in violation of principles of natural justice without providing reasons for reopening and the draft assessment order or in other words by not following the prescribed procedure laid down as per the provisions of s. 144B for faceless assessment. Order and demand notice is quashed and set aside. (AY. 2013-14)
Himgiri Mining & Projects v. NFAC (2024) 336 CTR 113(Guj) (HC)

1627 **S. 144B : Faceless Assessment –Principle of natural justice-Opportunity of personal hearing must be given even if not requested in writing-No discretion with Assessing Officer-Assessment order is set aside. [143(3), 144B(6)(vii), 144B(6)(viii), 251, Art. 226]**
Allowing the petition the Court held that in the first notice issued proposing a variation in income of the assessee only three days' time was granted to the assessee to reply. No assessment order was passed on the date fixed, i. e., March 15, 2024. The Assessing Officer had considered the adjournment application filed by the assessee on March 16, 2024 and had fixed another date for the very next day, i. e., March 17, 2024 which was a Sunday. Therefore, it was obligatory for the Assessing Officer to have fixed another date before passing the final order under section 143(3) read with section 144B for the assessment year 2022-23. Where the principles of natural justice had been violated, such an order was unsustainable and therefore, set aside. The assessee could treat the order as final show-cause notice and submit his reply. If the Assessing Officer did not accept the written explanation he would afford an opportunity of personal hearing to the assessee and then proceed in accordance with law. (AY. 2022-23)
Satish Kumar Bansal HUF v. NFAC (2024) 464 ITR 578 / 338 CTR 726 (All)(HC)

1628 **S. 144B: Faceless Assessment-Principle of natural justice-Opportunity of hearing-Matter remanded. [Art. 226]**
On writ allowing the petition the Court held that where notice was issued to assessee and reply was filed with specific request to grant opportunity of personal hearing, however, without considering that request, impugned assessment order had been passed by National Faceless Assessment Centre (NaFAC), such order was to be set aside and Assessing Officer was to be directed to pass fresh order after providing an opportunity of hearing to assessee. Matter remanded. (AY. 2022-23)
Ara India LLP v. NFAC (2024) 299 Taxman 538 (All.)(HC)

S. 144B : Faceless Assessment-Principle of natural justice-Opportunity of hearing – Assessment order had been passed five days after last date fixed that too without conducting any proceeding involving assessee, assessment-Order is set aside. [Art. 226] 1629
Petitioners case was assigned to NFAC on 16-5-2023 and first notice in that regard was uploaded on web portal of revenue authorities on 19-3-2024, fixing date 22-3-2024 and assessment order had been passed on 28-3-2024. Assessee filed writ petition contending that impugned assessment order was passed ex parte-Assessment order passed by Assessing Officer was wholly ex parte to extent a draft order was prepared and finalised and even in those proceedings no opportunity of hearing was given to assessee to furnish any response. Allowing the petition the Court held that order passed by the Assessing Officer being violation of principle of natural justice as assessment order had been passed five days after last date fixed that too without conducting any proceeding involving assessee, assessment order is set aside. (AY. 2022-23)
GHH India Mining and Tunnelling Equipment (P.) Ltd. v. PCIT (2024) 299 Taxman 519 / 466 ITR 363 (All.)(HC)

S. 144B :Faceless Assessment-Draft assessment order-Principle of natural justice-Order is passed without considering the reply-Matter remanded to the Assessing Officer. [S. 144C, Art. 226] 1630
Assessing Officer issued on 17-3-2022 a show-cause notice upon assessee asking for an explanation on draft assessment order forwarded to assessee under section 144C. Assessee gave his reply on 19-3-2022. Thereafter, again Assessing Officer made a correspondence vide notice under section 142(1) calling upon assessee to furnish accounts on or before 23-3-2022 and documents specified in annexure to notice. Assessee gave his reply on same day and another response on 30-3-2022. However, before same could be appreciated by Assessing Officer, assessment order was passed on 30-3-2022. On writ the Court held that since for assessment year 2014-15, show-cause notice was issued on 17-3-2022 and time limit for response was up till 20-3-2022, this duration was too short a period, particularly, when explanation and details had been sought of an assessment year about seven to eight years old, and therefore, proceedings drawn by Assessing Officer seemed to be in a hasty manner without a reasonable opportunity being given to assessee. Therefore, assessment order is set aside and matter is remanded back for fresh consideration. (AY. 2014-15)
Jaipal Reddy Amireddy v. UOI (2024) 299 Taxman 186 /339 CTR 302 (Telangana.)(HC)

S. 144B : Faceless Assessment-Reassessment-Alternative remedy-Question of fact-Writ petition is dismissed-Directed to file statutory appeal. [S. 69C, 115BBE, 147, 148, 246A, Art. 226] 1631
The assessee filed a writ petition against an order of reassessment passed under section 147 read with section 144B of the Income-tax Act, 1961 contending that the provisions of section 69C read with section 115BBE of the Act could not be invoked and the show-cause notice did not refer to these provisions. Dismissing the petition the Court held that the contentions raised by the assessee against the assessment order could be ably considered by examining the record. Considering that factual aspects were involved, the court would refrain from entering into a fishing enquiry under the writ jurisdiction.

Though the limitation period for filing of the statutory appeal had expired, considering the circumstances, the appellate authority was directed to hear the appeal on the merits if it was filed within a period of 15 days subject to making pre deposit if required in law.
Preet Remedies Ltd. v. NFAC (2024)462 ITR 463 (P&H)(HC)

1632 **S. 144B : Faceless Assessment –Principle of natural justice-Opportunity of hearing-Objections are not uploaded due to technical reasons-Order is set aside-Assessing Officer is directed to pass the order after direction from DRP. [S. 144C(2), Art. 226]**
Assessee filed objections under section 144C(2) with DRP and a copy thereof was filed with Jurisdictional Assessing Officer. It did not upload objections on portal. Assessee explained that this non-upload was due to a technical impediment in portal. Faceless Assessing Officer was unaware that assessee had filed objections. He passed the assessment order without waiting for DRP's directions under sub-section 5 of section 144C and issued demand notice. On writ the Court held that the Assessing Officer would pass an assessment order once DRP passes its directions and consequently, notice of demand in Form No. 7 was also quashed and set aside.
Renaissance Global Ltd. v. NFAC (2024) 297 Taxman 80 (Bom.)(HC)

1633 **S. 144B : Faceless Assessment-Natural justice-Limitation-Effect Of Standard Operating Procedure-Notice giving less than seven days for reply-Barred By Limitation-Order and consequential notices are set aside-Matter is remanded to the stage of notice and the petitioner is permitted to file his response. [S. 142(1), 143(3), 144, Art. 226]**
Court observed that under the standard operating procedure dated November 19, 2010, in case of a notice under section 142(1) of the Income-tax Act, 1961, a period of 15 days is normally to be given as a response time, which could be reduced to seven days in cases of subsequent notices. Allowing the petition the Court held that notice under section 142(1) had been issued on March 10, 2022, with March 14, 2022 as the date for response, which was even below seven days as mandated. The limitation for conclusion of the proceedings admittedly did not arise. Accordingly, on the sole ground of violation of principles of natural justice, the notice had to be set aside. All other proceedings resulting in orders passed had to be treated as consequential orders and the same had also to be set aside. Matter is remanded to the stage of notice and the petitioner is permitted to file his response. (AY. 2017-18)
Doreswamaiah Sureshbabu v. NFAC [2023] 155 taxmann.com 13 / (2024)460 ITR 429 (Karn)(HC)

1634 **S. 144B : Faceless Assessment-Principles of Natural justice-Ineffective hearing during video conferencing due to technical glitches-Order passed without granting requested rescheduling of video conference to explain complexity of material submitted-Assessment order and consequent notice of demand set Aside-The Department is at liberty to proceed with the assessment under the provisions of section 144B in accordance with law after issuance of show-cause notice-cum-draft assessment order and providing an opportunity of hearing to the assessee. [S. 143(3), 156, Art. 226]**
Allowing the petition, the Court held that the conversation in the chat box due to failure of audio during the video conference revealed that owing to technical glitches,

the assessee did not get an effective opportunity of explaining the case orally and requests for rescheduling the video conference were turned down violating principles of natural justice. Therefore, the order passed under section 143(3) read with section 144B was without affording an opportunity of personal hearing as prescribed under the provisions of section 144B, for faceless assessment and in violation of principles of natural justice. Hence, the assessment order and the consequent notice of demand under section 156 were quashed and set aside. The Department was at liberty to proceed with the assessment under the provisions of section 144B in accordance with law after issuance of show-cause notice-cum-draft assessment order and providing an opportunity of hearing to the assessee. (AY. 2018-19)
Leela Trade Link Pvt. Ltd. v. NFAC [2023] 156 taxmann.com 50/(2024)460 ITR 370 (Guj) (HC)

S. 144B : Faceless Assessment-Notices sent to E-Mail address furnished by assessee registered on Department's portal-Order of assessment is valid. [S. 144, 147, 148, Art. 226] 1635
Held, that the communications and notices had been sent to the only e-mail id of the assessee registered on the e-filing portal. From the records available on the system, it could be seen that, all communications including statutory notices and show causes in connection with the assessment proceedings for the assessment year 2017-18 were served through the registered e-mail id of the assessee. The assessment under section 147 read with sections 144 and 144B of the Income-tax Act, 1961 completed in the case by order dated April 26, 2023 was valid. (AY. 2017-18)(SJ)
P. M. Agency v. ITO (2024)460 ITR 224 /160 taxmann.com 674 (Ker)(HC)

S. 144B : Faceless Assessment-Opportunity of hearing-Request for personal hearing is not granted-Rejection of request for video conferencing is violation of principles of natural justice-Assessment order and demand notice set aside-Directed to provide opportunity of being heard. [S. 143(3), 144B(7), 156, Art. 226] 1636
Held, that no draft assessment with show-cause notice as required under section 144B(1) and section 144B(7) had been given to the assessee so as to enable the assessee to give an explanation for the proposed addition during the hearing before the National Faceless Assessment Centre. Therefore, the order was passed by the respondent in violation of principles of natural justice without affording an opportunity of personal hearing and not following the prescribed procedure laid down in the provisions of section 144B of the Act, for faceless assessment. In the result, this petition succeeded and was accordingly allowed. The order of assessment passed by the respondent under section 147 read with section 144B of the Income-tax Act, 1961, dated February 22, 2022 and demand notice under section 156 of the Act were quashed and set aside. The respondent would be at liberty to proceed with the assessment under the provisions of section 144B of the Act, 1961, as permissible under the law after issuance of show-cause notice-cum-draft assessment order so as to provide an opportunity of hearing to the assessee. (AY. 2017-18)
Vasupujya Infrastructures LLP v. NFAC (2024)460 ITR 363 (Guj)(HC)

1637 **S. 144B : Faceless Assessment –Opportunity of hearing-No notice was issued-PAN database no e-mail id was registered –Notice should have been served physically upon assessee at least by courier or speed post and acknowledgment filed as was also mentioned in SOP issued by CBDT for assessment units under faceless assessment-Revenue was to be directed to strictly comply with SOP in all cases, not just restricted to faceless assessment proceedings Reassessment and notice is quashed and set aside-Matter remanded for de novo consideration. [S. 147, 148, Art. 226]**

Assessing Officer passed reassessment order under section 147 read with sections 144B and made huge additions. Assessee filed writ on ground that no notice was issued to assessee prior to passing of assessment order. Revenue contended that in PAN database no e-mail id was registered and it could not be ascertained whether assessee had registered her email id prior to reassessment proceedings or during reassessment proceedings. Allowing the petition the Court held that whether if e-mail ID was not available in portal, it should have been served physically upon assessee at least by courier or speed post and acknowledgment filed as was also mentioned in SOP issued by CBDT for assessment units under faceless assessment. Revenue was to be directed to strictly comply with SOP in all cases, not just restricted to faceless assessment proceedings so that assessee would get reasonable opportunity to make his case. Matter is remanded for de novo consideration. (AY. 2014-15)

Fayeza Muffadal Contractor v. NFAC (2024) 296 Taxman 164 (Bom.)(HC)

1638 **S. 144B: Faceless Assessment-Assessment order passed without issuing draft assessment order, matter remitted to pass a fresh order per law. [S. 148, Art. 226]**

No draft assessment order has been passed by the AO as contemplated u/s. 144B. There is a material violation of the procedure prescribed u/s. 144B. Consequently, the case is remitted back to the AO to pass a fresh order on merits following the law within six months. (AY. 2017-18)

Devendran Coal International (P.) Ltd. v. NFAC (2024) 296 Taxman 417 (Mad)(HC)

1639 **S. 144B: Faceless Assessment-Principles of natural justice-At least 21 days time should be given to file reply-Legislative Intent is to provide an opportunity of being heard to the assessee before passing any orders, which are prejudicial to their rights/interests-It is bounden duty of the Assessing Officer to pass a detailed order, providing reasons for rejection of the contention of the assessee-Matter restored to the file of the AO as the assessee was granted time of 5 days only without referring to opportunity of personal hearing. [Art. 226]**

Through income-tax portal, the AO issued show cause to the assessee to file its objections within 5 days without referring to granting of personal hearing. As the assessee failed to file its response, the AO passed assessment order which was challenged in writ. Taking note of Legislative Intent that section 144B of the Act was to provide an opportunity of being heard to the assessee before passing any orders, which are prejudicial to their rights/interests. The High Court held that 5 days period granted to file response without providing for personal hearing was insufficient and period of at least 21 days should have been given for filing reply. The Court also held that it is bounden duty of the Assessing Officer to pass a detailed order, providing reasons for

rejection of the contention of the assessee. The assessment order passed was set aside and matter was remanded to the AO for fresh consideration. (AY. 2017-18)(SJ)
Gemini Film Circuit v. NFAC, Delhi (2023) 157 taxmann.com 445 (2024) 461 ITR 13 (Mad)(HC)

S. 144B : Faceless Assessment-Video Conferencing not granted by the Assessing Officer-Grave abrogation of jus naturale-impugned assessment order is set aside. [S. 144B(6)(viii), 147, 148, Art. 226] 1640
Reassessment proceedings for the AY 2018-19 were completed by the NaFAC vide Assessment Order u/s. 147 of the Act dated 15. 03. 2023 without considering the petitioners request for personal hearing through video conferencing as requested by the petitioner before the AO. Not granting opportunity of personal hearing is in violation of Section 144B(6)(viii) of the Act and is in grave abrogation of jus naturale. Impugned Reassessment Order and Notice of Demand, both dated 15. 03. 2023, were set aside. Matter remanded back to AO to consider the judicial precedents cited by the petitioner in its reply and to grant her a fair opportunity of being heard in person or through Authorized Representative. (AY. 2018-19)
Shashi Bala Sharma v. ITO (2024) 296 Taxman 446 (Delhi)(HC)

S. 144B: Faceless Assessment-Reassessment-Principle of natural justice-Technical glitch-Order is set aside. [S. 147, 148, Art. 226] 1641
The assessee was given an opportunity for a personal hearing through videoconferencing, which could not be concluded due to a technical glitch. When the officer from NFAC accepted such a glitch, the assessment order finalised was in breach of principles of natural justice and hence was to be quashed and set aside. The matter was remanded to the competent authority. (AY. 2016-17)
Kumarbhai Manharlal Desai v. ACIT (2024) 296 Taxman 12(Guj)(HC)

S. 144B : Faceless Assessment –Additional ground-Cash credits-Information from Investigation wing-Direction to give explanation before 29-3-2022-Assessment order assed without jurisdiction-Assessment order is invalid. [S. 68, 147, 148, 151A] 1642
The assessee raised an additional ground that the National Faceless Assessment Centre had erred in assuming jurisdiction under section 151A read with section 144B since they were not empowered to make assessment in a faceless manner prior to March 29, 2022. Tribunal held that the show-cause notice issued on March 28, 2022 was digitally signed showing the date of March 29, 2022 at 00:20:37 IST whereas the assessee is directed to give explanation before March 29, 2022. The Assessing Officer's assumption of jurisdiction prior to March 29, 2022 is without authority. (AY. 2017-18)
Nabiul Industrial Metal P. Ltd. v. ITO (2024) 115 ITR 81(SN)(Kol)(Trib)

1643 **S. 144B : Faceless Assessment –Limitation-Eligible assessee-Directions of Dispute Resolution Panel-Date of uploading of order of Panel on ITBA Portal is deemed date of receipt by National E-Assessment Centre-Limitation to be reckoned from that date-Due date for framing final assessment order not automatically extended-Barred by limitation. [S. 130, 144B(5) 144B(6)((v), 144C(13), Information Technology Act, 2000, S. 13]**

Tribunal held that on a cohesive reading of the provisions of sections 130 and 144B of the Act read together with section 13 of the Information Technology Act, 2000, the moment the document was uploaded by the originator, the Dispute Resolution Panel, on April 7, 2022 on the Income-tax Business Application portal that dispatch from the side of the Dispute Resolution Panel was complete and since the entire documents were uploaded through electronic mode, the receipt of the document was instantaneous. Hence, the date of receipt of the directions of the Dispute Resolution Panel also happened on April 7, 2022 itself and the due date in terms of section 144C(13) would be reckoned from that date. Merely, because the National e-Assessment Centre had retained the document for a few months and transferred it to the assessment unit on May 2, 2022, the due date in terms of section 144C(13) of the Act for framing the final assessment order by the Assessing Officer did not get automatically extended. Hence, the final assessment order ought to have been passed by the Assessing Officer on or before May 31, 2022. Since, the same was done on June 30, 2022 it was barred by limitation. (AY. 2018-19)

Microsoft Corporation (India) P. Ltd. v. Dy. CIT (2024)110 ITR 69 (SN)(Delhi)(Trib)

1644 **S. 144BA: Reference to Principal Commissioner or Commissioner in certain cases-Avoidance of tax-Applicability of Chapter X-A-Multiple share transactions indicating intention to avoid tax-Burden of proof on assessee to prove contrary-Evidence that share transactions not qualifying as permissible under tax laws-Chapter X-A is applicable. [S. 95 to 102, Art. 226]**

Held, dismissing the petitions that the arrangement was being scrutinized as it was considered devoid of commercial substance in terms of section 97. It was perceived as a deliberate misuse of the provisions of the Act, going beyond the intended use of the law, and manipulating it to one's advantage. It created extraordinary rights and obligations that seemed to be conducted not in good faith. These unusual rights and obligations were not in line with the general principles of fair dealing, leading to the conclusion that it was an impermissible tax avoidance agreement under section 96. Consequently, the arrangement fell under the purview of Chapter X-A. Given these circumstances, procedures were set in motion to apply the rules and regulations of Chapter X-A to this arrangement. There was clear and convincing evidence to suggest that the entire arrangement was intricately designed with the sole intent of evading tax. The assessee had not been able to provide substantial and persuasive proof to counter this claim. The Revenue had shown that the share transactions were not permissible tax avoidance arrangements. The evidence pointed towards the fact that these transactions did not qualify as permissible under the tax laws. Therefore, the provisions of Chapter X-A were applicable. The notice under section 144BA was valid. Finance Act, 2013 ([2013] 354 ITR (St.) 1) (AY. 2019-20)

Ayodhya Rami Reddy v. PCIT (2024)466 ITR 497 / 339 CTR 497 /163 taxmann.com 277 (Telangana)(HC)

Oxford Ayyappa Consulting Services (India) Pvt. Ltd. v. PCIT (2024)466 ITR 497 / 339 CTR 497 /163 taxmann.com 277 (Telangana)(HC)

S. 144C: Reference to dispute resolution panel-Draft assessment order-Passing of final order-Contrary to law-Mistake could not be cured-Delay of 424 days-SLP of Revenue is dismissed as the delay is not explained properly. [S. 156, 292B, Art. 136] 1645

Dismissing the appeal of the Revenue, the Court held that since at the stage of passing the draft order, ACIT had assessed tax, passed the final order, and also issued a demand notice. The procedure followed by the ACIT is contrary to law and the mistake could not be cured under section 292B of the Act. SLP of Revenue is dismissed as the delay OF 424 days in filing SLP is not explained properly. (AY. 2011-12 to 2013-14)

CIT(IT) v. Cisco Systems Services B. V. India Branch(2024) 300 Taxman 359 (SC)

Editorial : CIT(IT) v. Cisco Systems Services B. V. (2023) 293 Taxman 85/ 456 ITR 50/334 CTR 52 (Karn)(HC)

S. 144C : Reference to dispute resolution panel-Draft assessment order-Passing of final order-Contrary to law-Mistake could not be cured-Notice is issued in SLP filed by the Revenue [S. 156, 292B, Art. 136] 1646

Dismissing the appeal of the Revenue the Court held that since at the stage of passing draft order, ACIT had assessed tax, passed final order and also issued a demand notice. Procedure followed by the ACIT is contrary to law and mistake could not be cured under section 292B of the Act. Notice is issued in SLP filed by the Revenue (AY. 2011-12 to 2013-14)

CIT v. Cisco Systems services B. V (2024) 297 Taxman 399 (SC)

Editorial : CIT (IT) v. Cisco Systems services B. V. (2023) 456 ITR 50/ 293 Taxman 85/334 CTR 52 (Karn)(HC)

S. 144C : Reference to dispute resolution panel-Draft Assessment order-AO passed order unaware of the objection filed before DRP [S. 144C(2), 144C(4), Art. 226] 1647

Due to oversight / inadvertence petitioner did not inform the AO within 30 days period prescribed under section 144C(2) of the Act that it had filed objection. AO passed the order unaware of the objection filed before the AO. On writ the court set aside the order and the AO is directed to take further steps in the matter after the DRP passes its order on the objection filed by the petitioner, in accordance with law. (WP No. 474 of 2024 dt. 4-3-2024)

Omni Active Health Technologies Ltd v. ACIT (2024) BCAJ-April-P. 44 (Bom)(HC)

S. 144C : Reference to dispute resolution panel-Remand proceedings-Assessment order passed without passing a draft assessment is not tenable-Limitation period is expired. [S. 92C, 153(3), 154(4), 260] 1648

Held that it is mandatory for Assessing Officer to pass a draft assessment order under section 144C during remand proceedings. Final assessment order passed without passing a draft assessment order as mandated under section 144C is not tenable. Order is beyond limitation period hence bad in law. (AY. 2003-04,to 2011-12, 2017-18, 2018-19, 2020-21)

PCIT v. Sumitomo Corporation India (P.) Ltd. (2024) 471 ITR 688 /166 taxmann.com 55 (Delhi) (HC)

1649 **S. 144C : Reference to dispute resolution panel-Time limit-Direction of DRP-Uploading on ITBA portal on 17-6-2022-Final assessment order was passed on 25-3-2023-Order is barred by limitation. [S. 92CA, 144B, 144C(13), Art. 226]**

The petitioner challenged the assessment order by filing the writ petition on the ground that the order is barred by limitation. Allowing the petition the Court held that the period of limitation for passing an assessment order upon receipt of directions from DRP is one month from end of month in which directions are received. Directions of DRP were forwarded to Assessing Officer by uploading same on 17-6-2022, period of limitation for computing time for passing assessment order would start from 30-6-2022 and, thus, final assessment order passed on 25-3-2023, beyond time limit specified in section 144C(13), is barred by limitation. (AY. 2018-19)

Taeyang Metal India (P.) Ltd. v. Dy. CIT (2024)470 ITR 705 /160 taxmann.com 536 (Mad) (HC)

1650 **S. 144C: Reference to dispute resolution panel-Assessing Officer is mandated to pass final assessment order within time stipulated under S. 144C (4) of the Act-The fact that assessee had not filed objections before DRP within stipulated time is immaterial. [S. 144C (2), 260A].**

On an appeal preferred by the Revenue, the Hon'ble Delhi High Court was called upon to decide whether the order passed by the AO was beyond the time limit prescribed under the provision of section 144 of the Act. The Hon'ble Court on basis of the record observed that the final assessment order was passed beyond the stipulated period and therefore, barred by limitation. The Hon'ble Court thus, confirmed the order of the Tribunal and dismissed the appeal preferred by the Revenue. (AY. 2013-14)

CIT(IT)-2 v. Mavenir UK Holdings (2024) 341 CTR 317 / 167 taxmann.com 321 /301 Taxman 340 (Delhi)(HC)

1651 **S. 144C: Reference to dispute resolution panel-DRP has power to rectify its directions under section 154 of the Act. [S. 154, 260A]**

If an order is passed without taking note of the materials on record and subsequently, if it is brought to the notice of the Income-tax Authority under section 154, it would be open for the Income-tax Authority to rectify such mistake apparent from the record. Thus, DRP on consideration of material which were not considered earlier has come to the conclusion that it is a case to exclude trade discounts as well as discount warranty expenses and packing expenses from the ambit of advertisement and marketing and promotion expenses for the purpose of transfer pricing comparison, DRP is justified in assuming jurisdiction under section 154 to rectify the earlier direction. (AY. 2010-11)

PCIT v. Stanley Black and Decker India Ltd. (2024) 301 Taxman 145 (Karn.)(HC)

1652 **S. 144C : Reference to dispute resolution panel-Assessment Limitation-Assessment order is beyond limitation-Pending for final hearing-Assessment order passed under section 143(3) read with section 144C(3) and section 144B as also consequent demand notice and penalty proceedings were to remain stayed. [S. 143(3), 144B, 144C(3), Art. 226]**

A final assessment order was passed under section 143(3) read with section 144C(3) and 144B of the Act. A further notice of demand under section 156 and notice for

penalty under section 274 were also issued. On writ the Assessee contended that assessment order as also demand/penalty notices were illegal and void ab initio as much as same were beyond prescribed limitation for completion of assessment as prescribed by section 153 read with section 144C. Court held that issue as involved in is similar to one involved in assessee's own case for another year which was pending for final hearing. In said case of assessee following two other decisions of High Court it was observed that provisions of section 153 which provide for period of limitation is necessarily applicable to proceedings under section 144C. Following same, assessment order passed under section 143(3) read with section 144C(3) and section 144B as also consequent demand notice and penalty proceedings were to remain stayed. Followed *Shelf Drilling Ron Tappmeyer Ltd v. ACIT (2023) 295 Taxman 85/ 457 ITR 161 (Bom)(HC), CIT v. Roca Bathroom Products (P)Ltd (2022) 140 taxmann.com 304/ 445 ITR 537 (Mad) (HC), Bid Services Division Mauritius Ltd v. ACIT (WP No. 110 60 of 2023 dt 21-8-2023.* (AY. 2021-22)

PayPal Payments (P.) Ltd. v. ACIT (2024) 301 Taxman 78 /341 CTR 653 / 241 DTR 449 (Bom.)(HC)

S. 144C : Reference to dispute resolution panel-Transfer pricing-Draft assessment order-Eligible assessee-No estoppel against the law-AO have to assess the original return in terms of S. 143(1) or other relevant provisions of the IT Act and make an appropriate assessment order-Order is set aside. [S. 143(1), 144C(15)(b), Art. 226] 1653

There can be no estoppel against the law. Though the assessee in his revised return had claimed that he was a non-resident, the draft order made by the first respondent upon considering the material on record h categorically held that this claim was incorrect and the assessee was a "resident in India" and not a "non-resident". This is the Department's finding, and the Department cannot distance itself from it merely because the assessee may have claimed otherwise in his revised returns. The assessee has now accepted the position that he is a "resident in India" and, based upon such acceptance, submitted that the authorities need not consider his revised return because the same proceeded on an erroneous premise that the assessee was a "non-resident". Accordingly, the assessee cannot now be held as an "eligible assessee" as defined under S. 144C(15). If the assessee is not an eligible assessee, then there is no question of applying the procedure under S. 144C to the assessee. Order is set aside. (AY. 2021-22)

Aldrin Alberto Araujo Soares v. DCIT (2024) 340 CTR 99 / 239 DTR 305 / 162 Taxmann. com 186 (Bom)(HC)

S. 144C : Reference to dispute resolution panel-Assessment-Limitation-Order passed beyond one month of directions of DRP under S. 144C(13)-The assessment order was barred by limitation. [S. 143(3), 144C(13), Art. 226] 1654

Allowing the petition the Court held that from the provision of S. 144C(13), it is evident that the specified time-limit is one month from the end of the month in which directions are received. It is also clear that the time-limit should be computed from the date of receipt of directions issued under sub-S. (5) thereof. Directions of the DRP were forwarded to the AO, i. e., National Faceless Assessment Centre, Delhi by uploading the same on 17th June, 2022. Contention that the jurisdictional AO received the directions

only on 17th March, 2023 hence limitation should be counted from that date is not sustainable. Internal arrangement by which the assessment proceedings relating to the assessee were purportedly transferred so as to ensure that the proceedings are not barred by limitation is not material for this purpose. Period of one month expired on 31st July, 2022, whereas the assessment order came to be issued on 25th March, 2023,hence, the assessment order was barred by limitation. Followed *Louis Dreyfus Company India (P) Ltd. v. Dy. CIT (2024) 338 CTR 149/ 236 DTR 73 (Delhi) (HC)* (AY. 2018-19)
Taeyang Metal India (P) Ltd. v. Dy. CIT (2024) 338 CTR 161/ 160 taxmann.com 536 (Mad) (HC)

1655 **S. 144C : Reference to dispute resolution panel-Transfer pricing-Computation of arm's length price-Failure to pass draft assessment order-Assessment order is null and void. [S. 92CA(2), 92CA(3)]**
Assessee filed its return of income for relevant assessment years. As there were international transactions, a reference was made by Assessing Officer to TPO under sub-section (2) of section 92CA. TPO passed an order under section 92CA(3) making upward adjustment. Assessing Officer issued a final assessment order with TPO's proposed additions, but it skipped requirement of issuing a draft assessment order under section 144C(1) of the Act. Assessing Officer shall, in first instance, forward a draft of proposed order of assessment to eligible assessee if he proposes to make any variation which is prejudicial to interest of such assessee. Since in instant case there was a variation in assessment order different from what was filed in return of income and since it was by way of an addition made, variation was prejudicial to interest of assessee. Therefore, failure to pass a draft assessment order under section 144C(1) would result in rendering final assessment as one without jurisdiction. (AY. 2009-10, 2010-11)
CWT India (P.) Ltd. v. ACIT (2023)155 taxmann.com 450 / (2024) 336 CTR 497 (Bom) (HC)

1656 **S. 144C : Reference to dispute resolution panel-Transfer pricing-Arm's length price-Avoidance of tax-International transaction-Appellate Tribunal-Matter is remanded. [S. 92C, 143(3), 254(1), Art. 226]**
While passing assessment order, pursuant to remand of matter by Tribunal regarding aspect of fresh arms length price of international transaction undertaken by assessee, procedure under section 144C regarding forwarding draft of proposed order of assessment was not followed by Assessing Officer. On writ allowing the petition the Court held that procedure under section 144C would have to be followed even where assessment proceedings were sought to be concluded only on certain aspect of matter afresh upon remand. Accordingly the assessment order is set aside. (AY. 2014-15) (SJ)
Kennametal India Ltd. v. ACIT (2023)154 taxmann.com 439 / (2024) 336 CTR 483 (Karn) (HC)

S. 144C : Reference to dispute resolution panel-Eligible Assessee-Draft assessment order-Final assessment order passed while assessee's objections against draft assessment order sub-judice before Dispute Resolution Panel-Assessment order, notices of demand and penalty set aside-Assessing Officer is directed to pass fresh order in accordance with directions from Dispute Resolution Panel. [S. 144, 144B, 144C(2)(b)(ii), 144C(3), 156, 270A, 274, Art. 226] 1657

The Assessing Officer passed the final assessment order under section 144 read with section 144C(3) and section 144B of the Income-tax Act, 1961, while the assessee's objections section 144C(2)(b)(ii) against the draft assessment order were sub-judice before the Dispute Resolution Panel, on a writ petition allowing the petition, that the final order of assessment, the consequent notices of demand and penalty were set aside giving liberty to the Department to pass a fresh assessment order on receipt of direction from the Dispute Resolution Panel. (AY. 2020-21)

De Diamond Electric India Pvt. Ltd. v. NFAC (2024)465 ITR 626 (Delhi)(HC)

S. 144C : Reference to dispute resolution panel-Eligible assessee-Draft assessment order-Failing to communicate to Assessing Officer Final assessment order is passed during pendency of objections-Order set aside and Assessing Officer is directed to pass fresh order in accordance with directions of Dispute Resolution Panel. [S. 143(3) 144B, 144C(2), 144C(3), 144C(4), Art. 226] 1658

Allowing the petition the Court held that that the Assessing Officer could not be faulted for passing the order in question. However, since the assessee had already filed application raising its objections before the Dispute Resolution Panel and section 144C(4) required the Assessing Officer to pass the final order according to the directions that would be issued by the Dispute Resolution Panel, the order passed under section 143(3) read with sections 144C(3) and 144B, the notice of demand under section 156 and the notice of penalty under section 270A were set aside. The Assessing Officer could pass a fresh order in accordance with the directions of the Dispute Resolution Panel in the pending application. (AY. 2017-18)

Sulzer Pumps India Pvt. Ltd. v. Dy. CIT (2024)465 ITR 619 (Bom)(HC)

S. 144C : Reference to dispute resolution panel-Faceless Assessment-Limitation-Penalty-Draft assessment order-Transfer Pricing Officer has no role after directions issued by Dispute Resolution Panel-Directions binding on Assessing Officer-Order is time-barred-Original return of income is directed to be accepted-Order and penalty notice set aside. [S. 92CA(4), 143(3), 144C(5), 144C(13), 156, 270A, 274, Art. 226] 1659

Allowing the petition the Court held that the Transfer Pricing Officer could not have resumed proceedings post the passing of the directions under section 144C(5) by the Dispute Resolution Panel on June 20, 2022. The role of the Transfer Pricing Officer ended once an order as contemplated under section 92CA(4) had been passed and remitted to the Assessing Officer. Therefore, there was no occasion for the directive of the Dispute Resolution Panel to be uploaded on the Income-tax Business Application portal on June 24, 2022. It was additionally stated to have been dispatched through speed post to the Transfer Pricing Officer and the Additional/Joint/Deputy/Assistant Commissioner, National Faceless Assessment Centre on June 27, 2022. It was thereafter

that the Transfer Pricing Officer had passed the order dated July 25, 2022. According to the provisions of E-Assessment Scheme, 2019, all orders, notices and decisions have to be necessarily uploaded on the portal and as part of the larger faceless assessment regime which now holds the field. The uploading of the directive of the Dispute Resolution Panel on the portal would thus constitute valid and sufficient service and the period of limitation as prescribed in section 144C(13) would be liable to be computed. Accordingly, the order of assessment could have been framed lastly by July 31, 2022. The order of assessment, dated August 24, 2022, passed under section 143(3) read with section 144C(13) and the notice of penalty, dated August 24, 2022, under section 270A read with section 274 were quashed and set aside. The Deputy Commissioner had failed to comply with the mandatory timelines stipulated in the provisions under section 144C(13) to implement the directives of the Dispute Resolution Panel under section 144C(5). Therefore, the return as submitted by the assessee would be deemed to have been accepted and the tax liability worked out accordingly. Original return of income is directed to be accepted. Order and penalty notice is set aside. (AY. 2018-19)
Louis Dreyfus Company India Pvt. Ltd. v. Dy. CIT(2024) 464 ITR 595/ 338 CTR 149 (Delhi) (HC)

1660 **S. 144C : Reference to dispute resolution panel-Appellate Tribunal-Remand-Even in partial remand proceedings from Tribunal, Assessing Officer is obliged to pass a draft assessment order under section 144C(1). [S. 92CA(3), 144C(1), Art. 226]**
In course of assessment, TPO made certain additions on account of transfer pricing. Tribunal remanded matter back to file of TPO for fresh consideration. Assessing Officer passed an order giving effect to Tribunal's order by making a transfer pricing addition and determining a demand without passing a draft assessment order. On writ the Court held that the Assessing Officer is bound to pass a draft assessment order in terms of section 144C but since Assessing Officer without passing draft assessment order gave effect to Tribunal's order by making additions and issuing demand notice, impugned order passed by Assessing Officer was without jurisdiction and set aside. (AY. 2009-10)
ExxonMobil Company India (P.) Ltd. v. Dy. CIT (2024) 299 Taxman 205 /(2025) 474 ITR 142 (Bom)(HC)

1661 **S. 144C : Reference to dispute resolution panel-Eligible assessee-Assessment-Limitation-Draft assessment order-No variation in income-Barred by limitation-Order of Tribunal is affirmed-DTAA-India-Cyprus-[S. 144C(15)(b)(ii)), Art. 11]**
Dismissing the appeal of the Revenue the Court held that there was no variation in the income as returned by the assessee for the assessment years 2014-15 and 2015-16 on being referred to the Transfer Pricing Officer in respect of the international transaction. Only the assessee's claim for benefits under article 11 of the Double Taxation Avoidance Agreement between India and Cyprus ([1996] 218 ITR (St.) 70) was negated by the Assessing Officer. Accordingly, while the income offered became subject to tax at the rate of 20 per cent., the total income as declared remained unvaried. Section 144C as it stood at the relevant time would have empowered the Assessing Officer to pass a draft assessment order dated December 22, 2017 only if a variation in the income returned was suggested. There was no error in the finding of the Tribunal that the assessee

was an eligible assessee under section 144C(15)(b)(ii) to claim benefit of the Double Taxation Avoidance Agreement and holding that the final assessment order was barred by limitation as there was no variation in the income of the assessee. (AY. 2014-15, 2015-16)
CIT (IT) v. S. A. Chitra Ventures Ltd. (2024)463 ITR 154 (Delhi)(HC)

S. 144C: Reference to dispute resolution panel - Eligible assessee -Final assessment order as accompanied with demand and penalty notices-Order invalid. [S. 144C(8), 144C(15), 260A] 1662

The assessee's case was referred to the Transfer Pricing Officer (TPO) for the determination of the arm's-length price. The TPO passed an order, and accordingly, the assessee was classified as an 'eligible assessee' under Section 144C (15). However, when the Assessing Officer issued the assessment order, they also issued a notice of demand and penalty notices.
The court held that considering the draft assessment order was issued along with the notice of demand and penalty notice, it is, in fact, a final assessment order. Even upon reading the so-called draft assessment order, it was evident that the order was a final assessment, as the operative part of the order mentioned the demand and penalty notices. Given the requirement to issue a draft assessment order under Section 144C, and considering this order was a final assessment, the order is invalid. (AY 2015-16)
PCIT v. Hyundai Motor India Engineering (P.) Ltd. [2023] 156 taxmann.com 265 / 462 ITR 75/340 CTR 612 / 238 DTR 270 (Telangana) (HC)
Editorial: Similar issues have been determined in ACIT v. Vijay Television (P.) Ltd. [2018] 95 taxmann.com 101/407 ITR 642 (Mad.) (HC) and SHL (India) (P.) (Ltd.) v. DCIT [2021] 128 taxmann.com 426/282 Taxman 334/438 ITR 317 (Bom.)(HC)

S. 144C : Reference to dispute resolution panel – Assessment -Faceless assessment - Amendment with effect from 1-4-2020 - Not a substantive provision - Machinery provision which has been incorporated for the benefit of the assessees including eligible assessee-Assessment proceedings after 1-4-2020, amendment is applicable - Assessment is held to be valid. [S. 143(3), 144C(15)(b) (ii), Art. 226] 1663

Section 144C of the Income-tax Act, 1961 is not a substantive provision. It is a machinery provision which has been incorporated for the benefit of the assesses, including eligible assessees. A non-resident has been included in the definition of "eligible assessee" under section 144C(15)(b)(ii) with effect from April 1, 2020 and, therefore, assessment proceedings in respect of a non-resident undertaken after that date are to be governed under the provisions of section 144C. The Hon'ble High Court held that the assessment proceedings had been finalised under section 144C which is a machinery provision and in fact beneficial to the assessee. The final order of assessment had been passed strictly in accordance with the provisions of section 144C and the general provisions of section 153 or 153B would not be applicable. Further, the assessee had never raised objection in respect of the assessee not being covered within the provisions of section 144C before the assessing authority, which was evident from the assessment order itself. The order of assessment was valid. (AY. 2018-19)(SJ)
Parameswara Krishna Kaimal v. UOI (2024)462 ITR 154 /337 CTR 245 (Ker)(HC)

1664 **S. 144C : Reference to dispute resolution panel - Draft assessment order - Filed objections to proposed variation only with DRP and a copy of same was not marked to AO - Objections filed with DRP would result in directions to AO - AO must complete assessment in light of directions as envisaged under section 144C(13). [S. 144C(13), Art. 226]**
The Assessing Officer passed final assessment order under section 144C(3)(a). The Assessee filed writ on ground that upon service of notice of draft assessment order, the assessee had filed objections as against proposed variation with DRP but by inadvertence, the same was not filed with the Assessing Officer. As a result, the Assessing Officer was not informed about the objections to proposed variance and the impugned assessment order was concluded. Allowing the petition, the Court held that since the objections were filed with DRP, the same would result in directions to the Assessing Officer, and the Assessing Officer must complete the assessment in light of the directions as envisaged under section 144C(13). Accordingly the assessment order is quashed and proceedings were to be restored to stage under section 144C(5) directing DRP to consider the assessee's objections as against proposed variance. (AY. 2020-21)(SJ)
Google India (P.) Ltd v. NFAC (2024) 297 Taxman 26 (Mad)(HC)

1665 **S. 144C : Reference to dispute resolution panel - Draft assessment order - Objections against draft assessment order were filed - Copy of objections could not be placed before Assessing Officer - Assessment order was quashed and Assessing Officer is to be directed to await decision of DRP before issuing a fresh assessment order. [Art. 226]**
On reference, the TPO passed an order in case of the assessee assessing its income at a higher side than that returned. On such basis, a draft order was issued and the assessee filed objections before the DRP. However, a final assessment order was passed recording that the assesseee had no objection to draft assessment order. On writ, the Court held that the assessee had filed objections in Form 35A before the DRP on 27-10-2023 and an e-mail dated 30-10-2023 was on record which showed that objections were filed before the DRP. A copy of said objections could not be placed before the Assessing Officer through e-filing facility because such a facility was not available and objections were also attached to e-mail. Whether the assessment order, having been passed by the Assessing Officer without knowledge of the objections filed before the Dispute Resolution Panel (DRP), has caused prejudice to the assessee by denying it the opportunity of having its objections duly considered. Accordingly the assessment order is quashed and the Assessing Officer is directed to await the decision of the DRP before issuing a fresh assessment order. (AY. 2020-21) (SJ)
PAR Formulations (P.) Ltd v. NFAC(2024) 297 Taxman 401 /466 ITR 723 /(2025) 343 CTR 158 (Mad)(HC)

1666 **S. 144C : Reference to dispute resolution panel - Draft assessment order - Once objections have been filed by assessee against a draft assessment order within time limit prescribed under section 144C(2)(b), final assessment order should have been passed by Assessing Officer post receipt of direction from DRP-Matter remanded. [Art. 226]**
Allowing the petition the Court held that once objections have been filed by the assessee against a draft assessment order within the prescribed time limit under section

144C(2)(b), a final assessment order should have been passed by the Assessing Officer in accordance with the directions issued by the DRP. Matter remanded. (AY. 2020-21)
Pepsico India Holdings (P.) Ltd v. NFAC (2024) 297 Taxman 76/465 ITR 622 (Delhi)(HC)

S. 144C : Reference to dispute resolution panel - Order passed under remand proceedings also has to follow mandatory procedure - Final assessment order without following the procedure is bad in law and unlawful. [S. 144BA(12), 144C(14A), 263 Art. 226] 1667
Allowing the petition, the Court held that the order passed by the AO under remand proceedings also had to follow the procedure laid down in S. 144C, and the eligible assessee must be served with a draft assessment Order. Not doing so renders all the subsequent actions unlawful. Accordingly the order and demand notice is quashed and set aside. (AY. 2017-18)
Sinogas Management Pte. Ltd. v. Dy. CIT [2024] 461 ITR 330(Delhi)(HC)

S. 144C : Reference to dispute resolution panel - DRP can give directions only in pending assessment proceedings; once assessment order is passed, DRP would have no power to pass any directions contemplated under sub-section (5) of section 144C-Direction issue by DRP is quashed. [S. 92CA(3), Art. 226] 1668
The TPO passed an order under section 92CA(3) proposing an adjustment to the reported international and domestic related parties transactions after working out arm's length price (ALP). The Dy. CIT passed the draft assessment order dated 3-12-2018 under section 143(3), read with section 92CA(3), read with section 144C(1). The assessee, by a letter dated 14-12-2018, informed Dy. CIT that the assessee was in the process of filing an objection before the Dispute Resolution Panel and requested not to pass an assessment order under section 143(3) till the disposal of the objections by the DRP. However on 24-12-2018 the Dy. CIT passed the final assessment order. Unaware of said order, the assessee filed its objections before the DRP. The DRP proceeded to issue directions dated 16-9-2019 based on which another assessment order came to be passed. On writ, the assessee contended that the directions dated 16-9-2019 passed by the DRP were in gross violation of the provisions of the Act inasmuch as the DRP can hear and pass directions only in pending assessment proceedings. The DRP could give directions only in pending assessment proceedings and once assessment order is passed, rightly or wrongly, the assessment proceedings come to an end and, therefore, the DRP would have no power to pass any directions contemplated under sub-section (5) of section 144C. While concluding, the authorities submitted that in view of what is stated in the affidavit in reply where authorities have admitted that the assessment order dated 24-12-2018 could not have been passed, the appeal pending before the Commissioner (Appeals) will naturally get allowed/the assessment order would get set aside. That would result in the revenue not being able to pass assessment order under section 143(3) or even under section 147. Notwithstanding this, the DRP has proceeded to issue the directions which it should not have done. In the circumstances, the directions issued by the DRP on 16-9-2019 and the consequent assessment order dated 31-10-2019 is quashed and set aside. (AY. 2015-16)
Undercarriage and Tractor Parts (P.) Ltd v. DRP [2023] 156 taxmann.com 79/ [2024] 460 ITR 401 (Bom)(HC)

1669 **S. 144C : Reference to dispute resolution panel - Additional ground admitted - Passing of draft assessment order is mandatory - Specific waiver application filed before the DRP - No estoppel against the law - Order is bad in law. [S. 92CA(4), 254(1)]**
Held that the passing of the draft assessment order as prescribed under section 144C(1) of the Act is mandatory. There is no estoppel against the law. The assessee cannot be estopped from challenging the assessment order which was passed on the basis of the admission by the assessee itself before the DRP. Accordingly the order passed without passing the draft assessment order is bad in law. Appeal of the assessee is allowed. (AY. 2011-12) (ITA No. 2073/Mum/ 2022 dt. 31-1-2024)
Welspun Global Brands Ltd v. ITO (2024) Chamber's Journal-March-P. 115(Mum) (Trib)

1670 **S. 144C : Reference to dispute resolution panel - Order passed prior to issue of direction of DRP - Order passed after direction of DRP is not valid - Additional ground is admitted-Delay in filing of an appeal is condoned. [S. 143(3), 144C(13), 253(5)]**
Tribunal condoned the delay in filing of an appeal. Additional ground is admitted. on the facts order is passed prior to issue of direction of DRP hence the order passed after direction of DRP is not valid. (AY. 2018-19)
Cadmatic Oy v. ACIT (IT) (2023) 37 NYPTTJ 1723 /(2024) 229 TTJ 273 / 237 DTR 169 / 159 taxmann.com 320 (Mum)(Trib)

1671 **S. 144C : Reference to dispute resolution panel - Verification of objections-Verification can only by an assessee - Verification by Advocate or Authorised representative is not valid - Failure to give an opportunity to take remedial action - Matter remanded for filing a fresh objections. [S. 2(7), 2(31), 144C(1), 144C(2), 144C(5), Income-Tax (Dispute Resolution Panel) Rules, 2009, Rr. 2, 4(1), Form 35A]**
Held that the form under the Rules prescribed verification which permitted only the assessee to sign form 35A. Rule 4(1) of the Rules provides that the objections may be filed in person or through an agent. Rule 4(1) does not deal with the verification of form 35A but merely with who shall file the form. There is a distinction between the person who files the form and the person who verifies it. The form is required to be verified by the assessee. In terms of Rule 2(vi) of the Rules, since the term 'assessee' is not defined therein, its meaning must be derived from Section 2(7) of the Act. Section 2(7) defines the term assessee to mean a person from whom any tax or any other sum of money is payable under the Act and to include certain specified categories of persons. Person, in turn, is defined in section 2(31) of the Act. Looking to the various categories of the definition of the term person, it emerged that the authorised representative is not entitled to sign and verify form 35A. A chartered accountant or an advocate cannot declare what is stated in form 35A to be true to the best of his information and belief as he cannot be privy to information about the truthfulness of facts stated in that form. The authority based on which the advocate verified form 35A is not produced. The assessee had failed to show that the advocate was in any way connected and authorised to verify the form. Thus, the advocate who signed the form was neither an assessee nor an agent. The verification of the form by the advocate being an authorised representative of the assessee is not proper. However failure to give an opportunity to take remedial action. Matter remanded for filing a fresh objections. (AY. 2014-15, 2015-16)
Bridge India Fund v. Asst. CIT (IT) (2024)115 ITR 381 (Mum)(Trib)

S. 144C : Reference to dispute resolution panel-Arm's Length Price-Draft order-Order of Transfer Pricing Officer's order giving effect to directions of Dispute Resolution Panel direction is not rectified-Final assessment order is contrary to law-Order is set aside. [S. 92CA, 144C(13)] 1672

Held the final assessment order was passed by the jurisdictional Assessing Officer without considering the order giving effect passed by the Transfer Pricing Officer and the directions of the Dispute Resolution Panel as per section 144C(13). The Assessing Officer had also not taken any step to pass a rectification order. It is a clear violation of the law, which deserved to be acted upon. What was relevant was the final assessment order for all purposes, including the collection of tax. The assessment order is quashed. The Tribunal also held that when an authority acts contrary to law, the act of the authority is required to be quashed and set aside as invalid and bad in law and no action is required to establish the prejudice caused to the assessee. (AY. 2018-19)

Comparex India P. Ltd. v. ITO (2024) 115 ITR 19 (SN)/ 166 taxmann.com 720 (Delhi) (Trib)

S. 144C : Reference to dispute resolution panel-International transactions-Eligible assessee-Draft assessment order-Application of higher rate of tax-No jurisdictional error-Additional ground-Matter is remanded to the Assessing Officer-Reassessment is affirmed. [S. 115A, 143(3), 144C, 147, 148] 1673

Held that the draft assessment order is valid, there was no jurisdictional error. Additional ground is admitted and matter is remanded to the Assessing Officer. Reassessment is affirmed. (AY. 2014-15, 2015-16)

Regen Renewable Energy Generation Global Ltd. v. ACIT (IT) (2024)114 ITR 10 (SN) (Chennai)(Trib)

S. 144C : Reference to dispute resolution panel-International Transactions-Transfer Pricing-Limitation-Assessment not completed within 21 months from end of Assessment Year plus extension of 12 months for transfer pricing reference-Assessment is barred by limitation-Order is invalid-Draft Assessment order-Eligible assessee-Order is quashed. [S. 92CA, 114(15)(b)(ii), 153] 1674

Held that the date for passing of the Transfer Pricing Officer's order was on or before October 31, 2019, but because of completion of the assessment under section 153(1), 21 months from the end of the assessment year plus 12 months extension considering the reference for transfer pricing had to be made, making the final date December 31, 2019. Nevertheless, the final order passed on November 1, 2019, was not within 60 days prior to the time-limit for the assessment order. Thus, the final assessment order was clearly barred by limitation. Accordingly, the Transfer Pricing Officer's order was invalid. Hence, the entire transfer pricing adjustment proposed by the Transfer Pricing Officer became non est and liable to be quashed. In the instant case, there was no transfer pricing variation as a consequence of the order since the transfer pricing order was held to be time-barred, non est and void ab initio from the very date of its inception, that is, it entailed all the consequences of not having been passed at all. There remained no transfer pricing variation arising or remaining as a consequence thereof. As a result, the assessee could not be said to be an "eligible assessee" under section 144C(15)(b)(ii). Accordingly, once the assessee became an ineligible assessee, the

very foundation for proceeding to pass the draft assessment order did not survive, that is, the draft assessment order became legally invalid, and all consequential proceedings failed. Hence, the whole addition made in the final assessment order got quashed being barred by limitation. (AY. 2016-17)
India Medtronic P. Ltd. v. ITO (2024)112 ITR 447 /229 TTJ 257/239 DTR 15 (Mum)(Trib)

1675 **S. 144C : Reference to dispute resolution panel-Limitation-Transfer Pricing Officer to pass order at any time before 60 days prior to limitation-Order is barred by limitation. [S. 92CA(3A), 153]**
Held, that the order of the Transfer Pricing Officer should have been passed on or before October 31, 2019 whereas the order dated November 1, 2019 was beyond the time-limit stipulated under section 92CA(3A) read with section 153 of the Act. The order of the Transfer Pricing Officer is time-barred, order is quashed. (AY. 2016-17)
Diageo India P. Ltd. v. ITO (2024)112 ITR 435 (Mum)(Trib)

1676 **S. 144C : Reference to dispute resolution panel-Assessment-Eligible assessee-Resident Of Thailand Holding Residency Certificate-Matter remanded to Assessing Officer to pass speaking order duly following directions of Dispute Resolution Panel. [S. 143(3)]**
Assessee a resident of Thailand Holding Residency Certificate. Earning income from investments in mutual funds in India. Assessing Officer in draft order making additions of investments in mutual funds. Dispute Resolution Panel directing Assessing Officer to pass speaking order after examining explanation of assessee regarding source of investment. Assessing Officer passing final assessment order holding that no reply was received from mutual Funds And Repeating Additions Made In Draft Assessment Order-tax residency certificate on record. AO is directed to follow the Directions of Dispute Resolution Panel. (AY. 2013-14, 2016-17)
Veeratham Sachdev v. Dy. CIT (IT) (2024)112 ITR 79 (SN)(Delhi)(Trib)

1677 **S. 144C : Reference to dispute resolution panel-International Transactions-Eligible assessee-Remand by Tribunal with direction to consider additional ground raised by assessee-Assessing Officer passing final assessment order without passing order is void ab initio. [S. 254(1)]**
Held, allowing the appeal, that the Assessing Officer was required to adjudicate the issue of amount received under international sales and marketing agreement afresh in line with the directions of the Tribunal. It was incumbent upon the Assessing Officer to follow the procedure laid down under section 144C of the Act, to first pass the draft assessment order. The assessment order dated December 29, 2016 passed by the Assessing Officer without passing a draft assessment order is invalid and unsustainable, and liable to be quashed. (AY. 2010-11)
Marriott International Inc. v. Dy. CIT (2024) 110 ITR 632 (Mum)(Trib)

S. 144C : Reference to dispute resolution panel-Eligible assessee-Draft assessment order-Assessing Officer passing final assessment without passing a draft assessment order-Final assessment order invalid. [S. 144C(13)] 1678

Held, allowing the appeal, that the Assessing Officer having passed the final assessment order without passing draft assessment order the assessment order was invalid. Consequently, the assessment order is quashed. (AY. 2010-11)

Marriott International Inc. v. Dy. CIT (IT) (2024) 110 ITR 714 (Mum) (Trib)

S. 144C : Reference to dispute resolution panel-Non-Resident-Permanent Establishment-Matter remanded to DRP-DTAA-India-USA [S. 143(3), Art. 5(4)] 1679

Held, that the Dispute Resolution Panel had fallen in factual error in mentioning the plea of the assessee that the issue of dependent agent permanent establishment of the assessee in India had been considered by the Tribunal in the assessment years 2018-19 and 2019-20. With regard to the fixed place permanent establishment of the assessee the issue was settled in favour of the assessee. The Dispute Resolution Panel had erred in not dealing with the issue of the assessee-company having a dependent agent permanent establishment in India on the merits and erroneously directed the Assessing Officer to verify if the issue of dependent agent permanent establishment was decided in favour of the assessee by the Tribunal in the assessment years 2018-19 and 2019-20, which admittedly was not covered in the earlier years. The order of the Dispute Resolution Panel with regard to examination of the question of existence of dependent agent permanent establishment in the relevant assessment year and resultantly the final assessment order were to be set aside. (AY. 2021-22)

Automation Anywhere Inc. v. Dy. CIT (IT) (2024)110 ITR 46 (SN)(Delhi)(Trib)

S. 144C : Reference to dispute resolution panel-Eligible assessee-Draft assessment order-Assessing Officer in final order not empowered to make any other addition not proposed in draft assessment order. [S. 144C(1), 144C(5), 114C(13)] 1680

Held that the Assessing Officer did not complete the assessment in conformity with the directions of Dispute Resolution Panel which did not contain any variations on account of addition of contributions to the provident fund and employees' State insurance, fees paid for increase of authorised capital and profits on sale of fixed assets. These three items were not part of the draft assessment order. Hence, in view of the provisions of section 144C(13), the Assessing Officer was not empowered to make any other addition which was not proposed in the draft assessment order and hence the order of the Assessing Officer was not sustainable. (AY. 2016-17)

Mobase India P. Ltd. v. ACIT (NEAC) (2024)110 ITR 55 (SN) (Delhi)(Trib)

S. 144C : Reference to dispute resolution panel-Limitation period-Date of uploading DRP order on ITBA portal was 27-4-2022-Assessment completed on 30-6-2022 is time barred as null and void. [S. 143(3), 144C(13), Information Technology Act, 2000, S. 13] 1681

Held that date of uploading DRP order on ITBA portal was 27-4-2022, assessment had to be completed on 31-5-2022 but assessment having been completed on 30-6-2022 was time barred, null and void. (AY. 2018-19)

Honda R & D (India) (P.) Ltd. v. ACIT (2024) 207 ITD 278/231 TTJ 954/242 DTR 154 (Delhi) (Trib.)

1682 **S. 144C : Reference to dispute resolution panel-Assessing Officer passed final assessment order in case of assessee on 21-11-2017 after one month from end of month in which he received directions of Dispute Resolution Panel i. e., 18-9-2017-Order is time barred hence quashed and set aside. [S. 92CA, 144C(13)]**

TPO proposed TP adjustment. DRP confirmed said addition. Assessing Officer received directions of DRP on 18-9-2017, but final assessment was passed on 21-11-2017. On appeal the Tribunal held that since Assessing Officer was to pass final assessment order in conformity with directions of DRP on or before 31-10-2017, final assessment order having been passed on 21-11-2017, was bad in law hence quashed and set aside. (AY. 2013-14)

Conferencecall Services India (P.) Ltd. v. DCIT (2024) 207 ITD 435/112 ITR 53 (SN) (Chennai) (Trib.)

1683 **S. 144C : Reference to dispute resolution panel-Draft assessment order-After 1-10-2009, Assessing Officer is statutorily required to pass draft assessment order under section 144C(1)-Any addition is made before passing final assessment order under section 144C(3)is bad in law. [S. 144C(1), 144C(3)]**

The AO passed final assessment order dated 28-3-2013 without passing any draft assessment order. Commissioner (Appeals) had quashed final assessment order that had been passed without following mandatory provisions of section 144C(1), namely, without passing draft assessment year. On appeal the Tribunal held that after 1-10-2009, Assessing Officer is statutorily required to pass draft assessment order under section 144C(1), if he makes any addition before passing final assessment order under section 144C(3). Order of CIT(A) is affirmed. (AY. 2009-10)

Dy. CIT v. ADM Agro Industries Kota & Akola (P.) Ltd. (2024) 207 ITD 526 (Delhi) (Trib.)

1684 **S. 144C : Reference to dispute resolution panel-Not eligible assessee-Draft assessment order and assessment order is quashed as time barred-Additional ground-Question of law-Admitted. [S. 92CA, 144C(15) (b)(i), 153(1), 154(4)]**

The Tribunal admitted additional ground on question of law. Allowing the appeal the Tribunal held that TPO had passed the order under section 92CA on the 60th day of the limitation period prescribed in sub-sections 153(1), 153(4) on November 1, 2019. Time limit for passing the order expired on October 31, 2019. The Assessee did not qualify as an eligible assessee under section 144C(15)(b)(i) of the Act. The Assessing Officer could not have assumed jurisdiction to invoke section. 144C for passing the draft assessment order. The time limit expired on December 31, 2019, even if the benefit of the extended period of 12 months was granted on account of making a valid reference under section 92CA. The final assessment order was passed on October 31, 2021 therefore the order is barred by limitation. The transfer pricing order of November 1, 2019 and the final assessment order of March 31, 2021, were to be quashed as being bad in law. (AY. 2016-17)

Bristol-Myers Squibb(I)P. Ltd v. Add. CIT (2023) 151 taxmann.com 321/ (2024) 109 ITR 464 (Mum)(Trib)

S. 144C : Reference to dispute resolution panel-Limitation period DRP issued certain directions to Assessing Officer vide order 17-3-2022 and FAO being designated assessment unit was privy to DRP order in April 2022-limitation in extreme case scenario would run from April 2022 and would end on 31-5-2022-Assessment order having been passed on 30-6-2022, is time barred-Transfer of case records by Faceless Assessment Officer (FAO) to a different jurisdiction, i. e., Jurisdictional Assessment Officer (JAO) will not entitle Department to get extension of limitation period for framing assessment. [S. 144B, 144C(13)] 1685

Assessing Officer passed a draft assessment order proposing transfer pricing adjustment towards alleged international transactions alleging excessive advertisement/marketing promotion (AMP) expenditure. DRP endorsed AMP spends to be bracketed in league of international transaction and issued certain directions to Assessing Officer. Order is passed on 30-6-2022. On appeal the Tribunal held that since FAO being designated as assessment unit (even if considered distinct from NFAC) was privy to DRP order in April 2022, limitation in extreme case scenario would run from April 2022 and will end on 31-5-2022 and, thus, assessment order having been passed on 30-6-2022, was c time barred and outside limitation period assigned under section 144C(13). Transfer of case records by Faceless Assessing Officer (FAO) to Jurisdictional Assessing Officer (JAO) will not entitle Department to get extension of limitation period for framing assessment. (AY. 2018-19)

Nikon India (P.) Ltd. v. ACIT (2024) 206 ITD 419 /114 ITR 304/ 231 TTJ 466 (Delhi) (Trib.)

S. 144C : Reference to dispute resolution panel-Limitation period-Order is passed beyond one month from end of month in which directions of DRP were received by Assessing Officer-Barred by limitation. [S. 92C, 144C(13), R. 11] 1686

Assessee provided market support services to its associated enterprises. As its transactions involved international transactions, issue was referred to TPO who made TP adjustment. Assessee filed objections before DRP and directions of DRP were passed on 14-6-2022. The assessment order was passed on 1-8-2022. Tribunal held that assessment order dated 1-8-2022 passed after one month from end of month in which directions of DRP were received by Assessing Officer, on 14-6-2022, was time barred. (AY. 2018-19)

Lubrizol Advanced Materials India (P.) Ltd. v. A. unit (ITD) (2024) 205 ITD 312 (Mum) (Trib.)

S. 144C : Reference to dispute resolution panel-Draft assessment order-Assessing Officer is not empowered to make any other addition which was not proposed in draft assessment order. [S. 144(13)] 1687

TPO passed an order proposing certain adjustment to international transactions of assessee with its AE and Assessing Officer passed draft assessment order. DRP deleted addition proposed on account of Transfer Pricing adjustment. Thereafter, Assessing Officer passed final order making addition on account of PF & ESI, ROC Fess and profit on sale of fixed assets which items were not part of draft assessment order. Addition on account of PF & ESI, ROC Fess etc. were not part of draft assessment order is same deleted. As per section 144(13), Assessing Officer is not empowered to make any other addition which was not proposed in draft assessment order. (AY. 2016-17)

Mobase India (P.) Ltd. v. ACIT (2024) 205 ITD 380 (Delhi) (Trib.)

1688 **S. 144C : Reference to dispute resolution panel-Document Identification Number (DIN)-Order passed by DRP without a valid computer-generated Document Identification Number (DIN)-Illegal and non-est and deemed to have never been issued-Assessment order passed by Assessing Officer in pursuance to DRP's order was bad in law and quashed. [S. 144C(13)]**

The Assessing Officer passed an assessment order under section 144C(13) read with section 143(3) pursuant to the order passed by the DRP. The assessee challenged the validity of order passed by the DRP/Assessing Officer, without a valid DIN generated and quoted in the body of the order in view of Circular No. 19/2019 of CBDT dated 14-8-2019. Allowing the appeal the Court held that, as per section 144C(13), Assessing Officer had to pass final assessment order in conformity with directions issued by DRP and since DRP directions were held as invalid and deemed to have never been issued, being in violation of Circular No. 19/2019, assessment orders passed by Assessing Officer under section 144C(13) read with section 143(3) in pursuant to invalid, non-est DRP directions is bad in law, void ab-initio and accordingly quashed. (AY. 2006-07 to 2020-21)

Sutherland Global Services Inc. v. ACIT (IT) (2024) 205 ITD 270 (Chennai)(Trib)

1689 **S. 144C : Reference to dispute resolution panel-Final assessment order was passed by AO beyond period of one month from end of month in which direction of DRP was received-Assessment order was time-barred and void ad initio. [S. 144C(13)]**

TPO proposed an upward adjustment to total income of assessee in respect of international transaction of marketing support services. DRP affirmed the order dt. 28-1-2022 but final assessment order was passed by Assessing Officer on 30-12-2022. On appeal the Tribunal held that as per provisions of section 144C(13) ought to have been passed on or before 28-2-2022 hence the assessment order was time-barred and void ab initio. (AY. 2017-18)

Lubrizol Advanced Materials India (P.) Ltd. v. Assessment Unit (ITD) (2024) 204 ITD 130 (Mum) (Trib.)

1690 **S. 144C: Reference to dispute resolution panel-Objection is filed before DRP after due date of time allowed for filing objections-AO should carry proceedings to finalize assessment order as per provisions of section-Assessment order was barred by limitation and treated as void. [S. 92CA(3), 144C(4), 153]**

The draft of assessment order was passed on 4-3-2022, but the assessee filed objections before DRP on 6-4-2022. i. e. after due date of time allowed for filing of objections before DRP. On appeal the assessee contended that the final assessment order passed by the AO was invalid, bad in law and liable to be quashed being in contravention of the provisions of section 144C(4) of the Act. The tribunal held that since the final assessment order has been passed after due date prescribed u/s 144C of the Act, the order is barred by limitation and treated as void. (AY. 2013-14)

Mavenir UK Holdings v. ACIT [2024] 205 ITD 1 (Delhi) (Trib)

S. 144C: Reference to dispute resolution panel-Passing draft assessment order-AO passed final assessment order instead of draft assessment order-Invalid order-Order quashed. [S. 92CA(3), 144C(4), 153] 1691

Tribunal held that the Assessing Officer passed the final assessment order which was in contravention of provision of s. 144C of the Act. Accordingly the final assessment order being bad in law, all notices including the penalty notices and notice of demand is quashed. (AY. 2012-13)

Panasonic Life Solutions India (P.) Ltd. v. ACIT [2024] 205 ITD 139/ 227 TTJ 367 (Mum) (Trib)

S. 144C : Reference to dispute resolution panel-limitation-Order passed beyond period of one month from end of month in which direction received from DRP is time barred and void-ab initio. [S. 144(13) 1692

Assessee had raised its objection before the DRP which had confirmed the action of TPO and challenged the assessment order dated 28.05.2021 before the High court on the ground that the assessment order was passed before the expiry of the time period granted for filing objection before DRP and High Court quashed the assessment order. Subsequently the DRP passed its direction dated 28-1-2022 but the final assessment order was passed by the Assessing Officer on 30-12-20022. On appeal the assessee challenged the final assessment order is barred by limitation. As per section 144C (13), the order ought to have been passed on or before 28-2-2022. i. e with in on month from the end of the month in which DRP's direction was received. The ITAT held that the order passed beyond period of one month from end of month in which direction received from DRP is time barred and void-ab initio. (AY. 2017-18)

Lubrizol Advanced Materials India Pvt. Ltd. v. Assessment Unit (2024) 204 ITD 130 (Mum) (Trib)

S. 144C : Reference to dispute resolution panel-Not an eligible assessee –Assessment-Limitation-Assessment order is bad in law-Additional ground is allowed. [S. 92CA(3A), 144C(15)(b), 153(4), 254(1)] 1693

In this case, the assessee was selected for scrutiny, and a reference was made to the TPO under Section 92CA(1). The TPO proposed a transfer pricing adjustment of ₹ 153.24 crores on 1.12.2019, which the AO adopted in the draft order dated 30.12.2019. The assessee filed objections before the DRP, and the final assessment was completed on 6.4.2021 under Sections 143(3) r. w. s. 143(3A) and (3B). The assessee challenged the assessment before the Tribunal, arguing that the TPO's order was time-barred since the deadline under Section 92CA(3) expired on 31.10.2019. As a result, the assessee did not qualify as an "eligible assessee" under Section 144C(15)(b), and reference to the DRP was invalid. Consequently, the AO lacked jurisdiction to issue the draft order under Section 144C(1), and the final order passed on 6.4.2021 was beyond the limitation period prescribed under Section 153, even after considering the extensions under Sections 153(4) and 92CD(5)(b). The final assessment was therefore held to be time-barred and void ab initio. (AY. 2015–16, 2016–17)

Siemens Ltd. v. Dy. CIT (2024) 112 ITR 248 (Mum)(Trib.)

1694 **S. 145 : Method of accounting-Wastage-Suppression of weight or production-Addition is made on presumptions and assumptions-Addition affirmed by the Tribunal is deleted-Scarp value of discarded cables-Addition is deleted. [S. 41(2), 256(2)]**
On reference the Court held that the assessee's books of account, trading account and the stock had been found to be within the satisfaction of the authorities and the Assessing Officer had accepted them. The wastage of 13. 04 per cent. shown by the assessee had been held to be higher than the wastage shown for the previous year, i. e., 8. 66 per cent. That the stock production and consumption records were maintained under the supervision of the Excise authorities and there was no objection raised with regard to the stock. The Assessing Officer had not objected to the total stock maintained and could not have proceeded on a presumption alleging higher wastage shown by the assessee. Addition affirmed by the Tribunal is deleted. As regards the addition of profit under section 41(2) on the sale of copper wire, the assessment order and the explanation given by the assessee showed that the assessee had explained each and every question of the Assessing Officer. The reasoning given by the Assessing Officer for such an addition was found to be contrary to the facts. The Tribunal had erred in assessing the additions made by the Assessing Officer. (AY. 1983-84)
Shree Digvijaya Woollen Mills Ltd. v. CIT (2024)471 ITR 655 (P&H) (HC)

1695 **S. 145 : Method of accounting-Rejection of accounts-Rule of consistency-Offering income to tax in year in which services rendered-Tax rate same and no loss to revenue-Rejection of books of account is not justified. [S. 260A]**
Dismissing the appeal of the Revenue the Court held that from a reading of the order two findings of fact emerged. First, the money received by the assessee was offered to tax only when services were rendered. Second, this was an accounting practice followed consistently for several years. Lastly, since the tax rate remained the same, no loss was caused to the Revenue by the assessee offering the amount for the tax in the subsequent period. Order of Tribunal is affirmed. Followed *CIT v. Nagri Mills Co Ltd (1958) 33 ITR 681 (Bom)(HC), CIT v. Dinesh Kumar Goel (2011) 331 ITR 10 (Delhi)(HC)* (AY. 2010-11)
PCIT v. Nokia Solutions and Networks India Pvt. Ltd. (2024)469 ITR 535 (Delhi)(HC)

1696 **S. 145: Method of accounting-Survey-Excess-stock-Surrender-Reflected in sales and closing stock-Accounting treatment is held to be proper-Investment in excess stocks to be taxed as part of business income and not as income from other sources. Proper-Accrual-Notional interest-Lower interest charged from wife of one of partners-Commercial expediency-Notional addition is not justified-Partners were paid interest at 12 Per Cent. and balance in partners' account much more than amount advanced to wife of partner-Disallowance is to be restricted at 2 Per Cent. [S. 4, 5, 28(i), 69, 133A]**
Held that on the question whether the excess stocks surrendered by the assessee during the survey should be taxed as a part of business income, the Tribunal held that there was no infirmity in the assessee's bringing such transaction in its books of account and the accounting treatment thereof so as to regularise its books of account, and that this provided a credible base for the Department to bring to tax subsequent profit or loss on sale of such stock of rice in future. On the question whether the excess stock surrendered should be taxed as a part of business income, the Tribunal held that the assessee dealt in sale of foodgrains, rice and oil seeds, and the excess stocks been

found during the course of survey were stocks of rice, that therefore, the investment in procurement of such stocks of rice was clearly identifiable and related to the regular business stocks of the assessee. The Tribunal therefore, held that the investment in the excess stock had to be brought to tax under the head Business income and not under the head Income from other sources On the question of lower interest charged by the firm from the wife of one of the partners, the Tribunal held that once commercial expediency for giving the advance was established, no part of the interest expenditure could be disallowed, and that therefore, neither the addition of notional interest made by the Assessing Officer nor disallowance of interest by the Commissioner (Appeals) was justified. The Tribunal found that the partners were paid interest at 12 per cent., the balance in the partners account was much more than the amount advanced to R who was the wife of one of the partners and that therefore, even the disallowance made at 4 per cent. was not justified and it should be restricted at 2 per cent. only.
PCIT v. Bajargan Traders [2017] 86 taxmann.com 295 / (2024)466 ITR 397 (Raj)(HC)

S. 145 : Method of accounting-Books of account not rejected-Income cannot estimated without rejecting the books of account. [S. 132, 144,145(3), 153A] 1697
Assessee is engaged in providing corporate gifting solutions to various companies. A search and seizure operation under section 132 was conducted upon AMQ group of companies including assessee. Assessing Officer issued a notice under section 153A to assessee. Assessing Officer made additions to income of assessee on account of estimation of unaccounted profit, disallowance of expenses and inflated purchases. CIT(A) partly allowed the disallowance. On appeal the Tribunal deleted the disallowance. On appeal the Tribunal held that since Assessing Officer made additions to income of assessee on estimate basis without rejecting books of account, said additions were to be deleted. (AY. 2013-14, 2014-15)
PCIT v. Forum Sales (P.) Ltd. (2024) 298 Taxman 533 /468 ITR 392 (Delhi)(HC)

S. 145 : Method of accounting-Books of account-Sale of rice outside books-No qualitative details-Addition on account of sale of rice is affirmed. [S. 260A] 1698
Dismissing the appeal the Court held that the quantity of different quality of rice produced from milling of paddy could not be ascertained since the assessee did not maintain a stock register quality-wise. No evidence had been produced by the assessee to substantiate its submissions. In the absence of qualitative details it would be difficult to examine the sales of the assessee. The higher quality of a rice could be shown as sold at a lower rate in the bills. There was flaw in the maintenance of the details. Order of Tribunal is affirmed. (AY. 2008-09)
Mahavir Rice Mills v. CIT [2023] 153 taxmann.com 686 /(2024)460 ITR 413 (P&H)(HC)

S. 145 : Method of accounting-Failure to produce details-Rejection of books of account is justified-Matter is restored back to the AO to estimate the profit of the assessee at a percentage worked out on the basis of preceding three years. [S. 145(3)] 1699
Held that the assessee has not produced proper books and evidence before the AO, the issue is restored back to the AO to estimate the profit of the assessee at a percentage worked out on the basis of preceding three years. (AY. 2014-15)
Nanda Agrawal v. ITO (2024) 230 TTJ 46 (UO)/ 167 taxmann.com 707 (Raipur) Trib)

1700 **S: 145: Method of accounting-Project completion method-Advance from customers-Sale of 54 units-Neither sales were effected nor the possession of the flats were handed over to the purchasers during the relevant year-CIT(A) was not justified in sustaining the ad hoc addition of 10 per cent of the agreed value of the flats and also ad-hoc disallowance of common expenses. [S. 4, 37(1)]**

Held the assessee who is following project completion method for recognizing the revenue, having merely entered into agreements to sell some flats in the relevant year, and received substantial amounts against the sale consideration and handed over the possession of the flats to the purchasers only in the subsequent year, it cannot be held that the sales were effected during the relevant year and, therefore, CIT(A) was not justified in sustaining the ad hoc addition of 10 per cent of the agreed value of the flats. The Tribunal also held that the CIT(A) was not justified in sustaining the ad-hoc disallowance made by the AO. (AY. 2018-19)

VTP Mohite Associates v. Dy. CIT (2024) 231 TTJ 282 (Pune)(Trib)

1701 **S. 145 : Method of accounting-Rejection of books of account is justified-Bulk journal entries in the books of account-Provisions of S. 40(a)(ia),40A(3) cannot be applied-Companies engaged in the same line of business, have reported profitability in the range of 3 per cent to 9 per cent across these years-The profit of the assessee is to be estimated at 10 per cent of the contractual receipts. [S. 40(a)(ia), 40A(3), 153A]**

Held that the assessee explained before the lower authorities that such journal entries are passed at the end of the year for the purpose of transferring the amounts incurred during the year, which may have been erroneously debited to wrong ledger accounts, to the correct/appropriate ledger account, which is relevant to the concerned expenditure or for the purpose of consolidating the entries under primary ledger accounts. This explanation was tenable inasmuch as these journal entries passed to simply transfer the amounts debited under a wrong ledger to the correct ledger, and thus cannot be construed to be booking of bogus expense. Accordingly, the disallowance of the bulk journal entries deleted. Companies engaged in the same line of business, have reported profitability in the range of 3 per cent to 9 per cent across these years-The profit of the assessee is to be estimated at 10 per cent of the contractual receipts. (AY. 2016-17 to 2021-22)

ACIT v. Irulandi Thevar Vetrivel (2024) 232 TTJ 566 / 38 NYPTTJ 1253 (Chennai)(Trib)

1702 **S. 145 : Method of accounting-No defects in the books of account-Estimation of income at 10% of the gross contract receipt is affirmed. [S. 145(3)]**

Affirming the order of the CIT(A)the Tribunal held that, when there is defects in the books of account, rejection of books of account is not justified. Order of CIT(A) estimation of income at 10% of the gross contract receipt is affirmed. Followed, *CIT v. Om Overseas (2009) 315 ITR 185 (P&H)(HC) Dr. Prabhu Dayal Yadav v. CIT (2018) 162 DTR 12 (All) (HC) CIT v. Swastik Food Products (2014) 109 DTR 23/ (2015) 275 CTR 109 (HP)(HC)* (AY. 2014-15)

ACIT v. Radheshyam Agarwal (2022) 36 NYPTTJ 654 / (2024) 228 TTJ 964 (Raipur)(Trib)

S. 145 : Method of accounting-Construction business-Project-completion method of accounting-Addition of income on pending projects applying the percentage competition method is not justified. 1703

Held that when the assessee is following the project-completion method, the action of the Assessing Officer in applying the percentage-completion method on the basis of the Income Computation and Disclosure Standards III by part-reading it and totally ignoring the transitional provisions therein, is not justified. Accordingly the addition is deleted. (AY. 2018-19)

Mayfair Properties v. Dy. CIT (2024)115 ITR 619/ 167 taxmann.com 397 (Kol)(Trib)

S. 145 : Method of accounting-Accrual of income-Running Fertility Clinic offering surrogacy services-Advances from Foreign Nationals subsisting for repayment-Matter remanded for verification. [S. 4, 5] 1704

Held that the assessee had recognised most of the income received from the foreign nationals as its income in subsequent assessment years, the assessee's accounts could not be said to be true and correct. Matter remanded for verification. (AY. 2017-18)

ACIT v. Kiran Infertility Centre P. Ltd. (2024)114 ITR 255 (Hyd)(Trib)

S. 145 : Method of accounting-Rejection of books of account-Estimation of gross profit-Disclosed higher gross profit-Addition is deleted. [S. 145(3)] 1705

Held that merely because disclosure of higher gross profit in earlier years, the book result cannot be rejected. Addition is deleted. (AY. 2016-17)

ACIT v. Ludhiana Beverages P. Ltd. (2024)114 ITR 81 (SN)(Amritsar)(Trib)

S. 145 : Method of accounting-Charge of income-tax-Firm off Chartered Accountants rendering professional Services-service tax-Difference between gross receipts as per Income-Tax Return and service tax cannot be treated as income-Diversion by overriding title-Payments to retired partners and spouses of deceased partners in accordance with clauses of partnership deed-Cannot be assessed as income-Deduction of tax at source-Direction of CIT(A) is held to be proper. [S. 4, 5, 37(1)] 1706

Held that the assessee followed the cash method of accounting and only the fees which it received during the year were considered income whereas for the purpose of service tax and goods and services tax, the gross receipts/turnover was based on invoices issued and not on the basis of fees collected. Considering all these facts on record supported by documentary evidence, the reconciliation furnished by the assessee is justified. Accordingly, the difference between the gross receipts/turnover as per the Income-tax return and service tax added by the Assessing Officer is directed to be deleted. That the undisputed facts were that the assessee-firm made payment to retired partners in terms of its partnership deed on the basis that the partner would have rendered professional services during his tenure as a partner but could not enjoy the fruits thereof on account of work having remained incomplete and the concerned client could not be billed for the work already done. Considering the facts on record and the documentary evidence and the terms of the partnership deed, the addition made in this respect by the Assessing Officer was to be deleted. The alternate claim of the assessee under section 37(1) of the Act was rendered infructuous. (AY. 2018-19)

Deloitte Haskins And Sells LLP v. NEAC (2024)113 ITR 24 (SN)(Mum) (Trib)

1707 **S. 145 : Method of accounting-Change of method-Advance tax-Interest-Matter remanded. [S. 234A]**

Held that the assessee had disclosed the change of method in revenue recognition during the year, the disclosure of the financial impact of such change of method had not been properly brought on record. This made the Assessing Officer to doubt the change of method adopted by the assessee in order to understate the income. The assessee had to disclose financial information for two years in its balance-sheet as on March 31, 2018 and as at March 31, 2017 with the corresponding impact of such change relating to computation of income declared in the earlier years, March 31, 2018 and March 31, 2017. The Assessing Officer was to verify the impact in the financial statements and verify the declared financial impact in both financial years as well as Income-tax computation. The profit declared by the assessee in the earlier years as per old method of accounting and because of change of method of accounting, there may be understatement or overstatement of declared profit. This under or overstatement of profit in the earlier years had to be acknowledged as an impact on such change of profit and ultimately the correct profit alone has to be charged to tax. The matter was remanded to the Assessing Officer to give proper opportunity of being heard to the assessee. That the levy of interest under section 234A was consequential in nature. If there was increase in the taxable income more than the income declared by the assessee, there would be impact of interest on such additional taxable income. Matter remanded to the Assessing Officer. (AY. 2018-19)

SH Tech Park Developers P. Ltd. v. ACIT (2024)113 ITR 19 (SN)(Delhi)(Trib)

1708 **S. 145 : Method of accounting-Rejection of books of account-Estimation of profits at 3 Per Cent by the Assessing Officer is affirmed. [S. 44AA, 145(3)]**

Failure to substantiate the book results, the AO estimated the profit at 3 Per Cent. CIT(A) deleted the addition. On appeal by the Revenue the Tribunal held that CIT(A) simply accepted the explanation of assessee without any valid reasons. Order of the AO is affirmed. (AY. 2012-13)

ITO v. BASE Industries Ltd. (2024)112 ITR 56 (SN)(Surat)(Trib)

1709 **S. 145 : Method of accounting-Rejection of books of account-Trader and manufacturer of diamonds-Audit report not disclosing any defect in books of account-Diamond stock piece-wise, colour wise, data wise and carat-wise, and grade-wise held not legally tenable-Maintenance of books of account by assessee in accordance with provision of Act. [S. 44AB, 145(3)]**

Held, allowing the appeal, that the assessee had filed its stock book of polished diamonds date-wise and carat-wise and details of sales and purchases and the reconciliation with trading account and sample invoices for agency commission with the invoices in respect of import of the purchases. The audit report did not disclose any defect in the maintenance of books of account by the assessee. The gross profit could easily be ascertained on the basis of the documents filed by the assessee. This apart, the Assessing Officer had accepted a similar explanation of the assessee for the assessment year 2018-19 and the Department had been accepting the assessee's method of accounting in earlier years as well. The Assessing Officer had not brought

on record any other comparable case. The assessee had maintained quantitative details of diamonds. The qualitative details of stock of diamonds piece-wise, colour-wise, data-wise and carat-wise were not required to be maintained under the Act and Rules. The Commissioner (Appeals) had failed to appreciate the facts in the light of the relevant law. Addition made by the Assessing Officer merely on the basis of estimation for want of details of assessee's diamond stock piece-wise, colour-wise, data-wise and carat-wise, and grade-wise is not legally tenable and the maintenance of the assessee's books of account was in accordance with the provision of the Act. (AY. 2017-18)
Rajgir Gems LLP v. Asst. CIT (2024)112 ITR 28 (SN)(Mum)(Trib)

S. 145 : Method of accounting-Whole sale food items-Estimation of net profit-Matter is remanded back to Assessing Officer to adjudicate afresh. 1710
Assessee is engaged in business of trading of food grains. Assessing Officer held that assessee had disclosed net profit at rate of 1. 94 per cent for year under consideration in comparison to preceding year at 11. 94 per cent. He computed average net profit percentage of three years which worked out to 9. 39 per cent and finally he computed business income at rate of 9. 39 per cent on turnover and assessed total income accordingly. CIT(A) affirmed the order of the AO. On appeal the Tribunal held that in relevant year is engaged in business of wholesale food items and therefore profit margin based on turnover/volume would be lower and Assessing Officer compared same with net profit rate of earlier years, where assessee was engaged in retail trade and profit margin differed. Matter is remanded back to the file of the AO to adjudicate afresh. (AY. 2016-17)
Ashok Anand Shetty v. ITO (2024) 208 ITD 714 (Mum) (Trib.)

S. 145 : Method of accounting-Books of account-Rejection of estimation of profits-Rejection of books of account is held to be not justified. [S. 44AB, 145(3)] 1711
Held, that the assessee-company had fully maintained its books of account with day-to-day quantitative details in respect of job work carried out. The books of account were audited under the Companies Act as well as under section 44AB of the Act. In the course of assessment proceedings, the assessee submitted various details including sales register, purchase register, month-wise summary of quantitative details of production in quantity as well as value, stock details of colour and chemicals duly disclosed in tax audit report and date-wise production register showing dyed pieces, dyed meters, dyed amount, dried pieces, dried meters and dried amount separately and complete books of account before the Assessing Officer. The auditors had not passed out any adverse remarks related to closing stock valuation of raw materials, colours and the Assessing Officer had not pointed out a single transaction of sale or purchase which was not accounted for or outside the books of account. Based on these facts, the books of account of the assessee should not be rejected and the turnover could not be enhanced on illogical basis by the Commissioner (Appeals). Addition is deleted. (AY. 2013-14)
Mahavir Dyeing and Printing Mills P. Ltd. v. Asst. CIT (2024)111 ITR 53 (SN)(Surat) (Trib)

1712 **S. 145 : Method of accounting-Survey-Estimation of income-Assessee has shown net profit of 2 %-AO estimated net profit at 5%-Reported a profit of 8% in earlier years-Estimate of income at 5% is affirmed-Assessment order and intimation bearing DIN were uploaded on revenue's portal-Assessee can not challenge validity of assessment order for lack of DIN-Assessment-Digital signature-On account of technical issues departmental authorities were prevented from making digital signatures, prompting manual signing of assessment order-Orders were uploaded and sent to assessee's registered email ID, it was deemed to be authenticated and therefore, assessment order was valid. [S. 133A, 143(3), 144, 147, 148,156, 271A, 271B, 282A(2)R. 127A]**

Assessee, a non-resident Indian was running a gold jewellery shop. In the course of survey at business premises, it was found that assessee did not maintain books of account and only kept records of daily cash sales and stock using certain software. Brother-in-law, of assessee who managed business, admitted to suppressing sales during questioning under section 133A Admitted sales suppression led to assessments made under section 144 read with section 147 on a best judgment basis, as assessee did not respond to section 148 notices. The AO estimated the net profit at 5% as against a net profit rate of 2% shown by the assesseee. CIT(A) affirmed the order of the AO. On appeal the Tribunal held that the assessee himself returned a profit rate of 8 per cent in earlier year. Appeal of assessee is dismissed. Tribunal also held that Assesssment order and intimation bearing DIN were uploaded on revenue's portal-Assessee can not challenge validity of assessment order for lack of DIN. As regards Digital signature the Tribunal held that On account of technical issues departmental authorities were prevented from making digital signatures, prompting manual signing of assessment order-Orders were uploaded and sent to assessee's registered email ID, it was deemed to be authenticated and therefore, assessment order was valid. (AY. 2015-16, 2106-17, 2019-20)

Mytheenkunju Muhammed Kunju Kandathil Jewellers v. DCIT (IT) (2024) 206 ITD 226/113 ITR 40 (Cochin) (Trib.)

1713 **S. 145 : Method of accounting-Project completion method-The Assessing Officer is not justified in rejecting the project completion method and estimating the income on percentage completion method-No addition can be made merely on the basis of sales shown in the GST return and Income tax return when the assessee is able to reconcile the difference. [S. 4]**

The assessee is in the business of real estate. It followed the project completion method as the project is not completed the income was not shown in the return of income filed by the Assessee.. In the course of assessment proceedings the Assessing Officer noticed huge difference of sales as shown in the GST return and in the income tax return. The assessee has explained the difference due to project completion method followed by the assesee as well as the different concept of sale for the GST and income tax. The Assessing Officer not satisfied with the explanation made difference as per GST return and sales as per regular book as income of the assessee. On appeal the CIT(A) deleted the addition accepting the project completion method followed by the assessee. On appeal by the Revenue, it was contended that the assesee should have offered the income on percentage completion method. The Honourable Tribunal analysing the

provisions of GST, accounting standard and various judgements, affirmed the order of the CIT(A) deleting the addition. As regards other issues the matter was remanded to the file of the Assessing Officer. (ITA No. 3751/M/2023 dt. 30-9-2024)(AY. 2018-19)
ITO v. Reliable Builders and Developers (Mum)(Trib) www.itatonline.org

S. 145 : Method of accounting-Percentage completion method –No defects in the books of account-No addition can be made on the basis of projected revenue during the proceedings under section 197. [S. 197] 1714

Assessee entered into a sub-contract agreement and filed return claiming contract loss. Assessing Officer observed that during proceedings under section 197 seeking lower deduction of tax at source certificate, assessee had projected revenue of entire project and amount stated to be received for relevant year was at huge variation from amount reflected in financial statements. He, thus, passed draft assessment order proposing adoption of estimated revenue and to disallow estimated loss. It was noted that assessee was following percentage completion of method (PCM) consistently to recognize revenue in books of account. Also deviation in estimation and actual revenue stood explained by fact that duration of project got extended to financial year 2020-21 which was much beyond agreed original contract period-Whether as per AS-7 any expected excess of total contract costs over total contract revenue for contract is recognized as an expense immediately irrespective of stage of completion of contract activity and following same assessee had recognised contract losses. Since in application made under section 197, assessee had merely projected contract revenue, these estimations could not be taken to be turnover of assessee disregarding actual revenue earned by assessee. Since no defect was pointed in books of account by Assessing Officer, additions were to be deleted. (AY. 2018-19)
ST Engineering Electronics Ltd. v. ACIT, IT (2024) 204 ITD 216 (Chennai) (Trib.)

S. 145: Method of accounting-Addition cannot be made on account of Low GP. 1715

Where Assessing Officer found that the assessee had shown a GP rate of 11. 25 percent as against the GP rate of 12. 8 percent of the immediately preceding year and he made an addition by taking a GP rate of 12. 8 percent for want of relevant documents, since the assessee had produced all relevant books before Commissioner (Appeals) and Assessing Officer had accepted same, the addition made on account of low GP rate was to be deleted (AY. 2010-11)
Dy. CIT v. Kortek Electronics (India) Ltd. [2024] 109 ITR 276 (Delhi) (Trib)

S. 145A : Method of accounting in certain cases –Valuation of closing stock-Valuation of Inventories-If the AO add VAT to the closing stock value, then necessarily he has to add VAT amount in the opening stock value also and in that circumstances the net effect will be neutral-Addition of VAT amount to the closing stock value is not sustainable. [S. 44AB] 1716

The assessee prepared his accounts in compliance with AS-2 "Valuation of Inventories" issued by the ICAI. According to the Guidance Note on Tax Audit under s. 44AB issued by the ICAI, S. 145A provides that the valuation of purchases and sales of goods and inventory for the purpose of computation of income from business or profession shall be made on the basis of the method of accounting regularly employed by the assessee

subject to certain adjustments. It is not necessary to change the method of valuation of purchases, sales and inventory regularly employed in the books of account. The adjustments provided in this section can be made while computing the income for the purpose of preparing the return of income. (AY. 2017-18)
Arunkumar Puthige v. ITO (2024) 232 TTJ 342 / 243 DTR 350 (Cochin)(Trib)

1717 **S. 145A : Method of accounting in certain cases-Valuation of stock-Valuation of inventories, net of CENVAT-Method followed consistently-No addition could be made on account of CENVAT credit.**
Assessing Officer made addition on account of unutilized CENVAT credit account on ground that assessee was liable to include amount of duty, cess, tax etc. in amount of purchases, sales and closing stock. Commissioner (Appeals) deleted the addition. Tribunal in assessee's own case for earlier assessment year on identical issue had held that since assessee had been recording its transactions of purchase, sales and valuation of inventories, net of CENVAT consistently and if inventory of closing stock would be enhanced by amount of CENVAT credit attributable to it, then amount of corresponding purchases should also be increased by said amount which would result in tax neutral exercise. Order of CIT(A) is affirmed. (AY. 2013-14)
DCIT v. Adani Mining (P.) Ltd. (2024) 204 ITD 269 (Ahd) (Trib.)

1718 **S. 147: Reassessment-After the expiry of four years-No failure to disclose material facts-Change of opinion-Notice and order disposing the objection is quashed-Delay of 429 days in filing SLP- SLP of Revenue is dismissed as the reasons assigned for explaining the delay are neither satisfactory nor sufficient. [S. 148, Art. 136]**
Allowing the petition, the High Court held that the assessee had addressed a letter dated October 8, 2014, to the officer in the course of assessment proceedings, pointing out in clear terms that certain shares were sold. The Department already had the information on that count. If the officer was not satisfied with the explanation furnished by the assessee at that stage, he could have exercised powers to make an addition, but he did not choose to do anything on such count. Therefore, the action of the Assessing Officer was in the nature of a change of opinion only. The notice of reassessment was not valid. The Revenue filed an SLP before the Supreme Court there was delay of 429 days. The reasons assigned for explaining the delay are neither satisfactory nor sufficient. SLP of Revenue is dismissed. (AY. 2012-13)
Asst. CIT v. AIM Fincon Pvt. Ltd. (2024)468 ITR 110/301 Taxman 169 (SC)
Editorial: AIM Fincon Pvt Ltd v. ACIT (2023) 457 ITR 737 (Guj)(HC) / 2022 SCC Online Guj 2641

1719 **S. 147: Reassessment-After the expiry of four years-Development agreement-Capital gain tax-Granted a licence to developer-Issue was consideration before the Assessing Officer-No failure to disclose material facts-Reassessment notice and order disposing the objection is quashed by High Court-SLP of Revenue is dismissed. [S. 2(47)(v), 45, 148, Transfer of Property Act, 1882, S. 53A, Art. 136]**
The assessee's case was selected for scrutiny and it received notice under section 143(2). During relevant year, the assessee, along with other co-owners, entered into a Development Agreement with SA for developing land in Chikhloli, Ambernath. In the

assessment proceedings under section 143(3), the assessee submitted a copy of the Development Agreement to the Assessing Officer. The Assessing Officer questioned whether the Development Agreement should be treated as the 'transfer of the land,' potentially resulting in capital gains. The assessee responded, explaining that the Development Agreement did not constitute a transfer of the land, citing relevant legal provisions. The Assessing Officer accepted this explanation, and the assessment order under section 143(3) was issued, without making any capital gains addition. However, other additions were made to the petitioner's total income. After four years, the assessee received a notice under section 148, indicating that the assessing authority believed the assessee's income for the assessment year 2013-14 had escaped assessment under section 147. The assessee also received a notice under section 142(1) and was provided with the recorded reasons for reopening the assessment. The assessee raised detailed objections in response to these notices, which came to be disposed of by order dated 14-2-2022. On writ petition, the assessee challenged this order and the notice issued under section 148. Allowing the petition the Court held that once a query is raised during the assessment proceedings and the assessee has replied to it, it follows that the query raised was the subject of consideration of the Assessing Officer while computing the assessment. It is not necessary that an assessment order should contain reference and/or discussion to disclose its satisfaction in respect of the query raised. This would also indicate that there was no failure to disclose any material fact. Notice and order disposing the objection is quashed and set aside. SLP of Revenue is dismissed by supreme Court. Followed Dy. CIT v. Bharat Jyantilal Patel (2023) 296 Taxman 247/ 462 ITR 455 (SC) (AY. 2013-14)

Dy. CIT v. Darshana Anand Damle (2024) 300 Taxman 108/ 469 ITR 27 (SC)

Editorial : Darshana Anand Damle v. Dy. CIT (2023) 295 Taxman 240/ 459 ITR 60(Bom)(HC)

S. 147: Reassessment-After the expiry of four years-Capital gains-No failure to disclose material facts-Reassessment notice and order disposing the objection is quashed by High Court-SLP of Revenue is dismissed. [S. 48,143(3) 148, Art. 136] 1720

Assessee an individual derived income from different sources including share in partnership firm. Assessee along with five co-owners bought land into partnership firm. Return was selected for scrutiny and regular assessment was completed under section 143(3) of the Act. Thereafter assessment was sought to be reopened on ground that share of assessee did not match with transaction shown by assessee. Notice under section 142(1) had been issued and various details had been called for furnishing purchase/sale deed of property sold during relevant year. Assessment order passed under section 143(3) also stated that source of income of assessee was partnership share income and assessee had also shown income from short term capital gain. On writ High Court held that in absence of any other material, reasons for belief that income had escaped assessment for reopening of case under section 147 clearly indicated that this belief was based on no material and there was no valid ground existing for resorting to reopening of assessment by invoking proviso to section 147 and thus, notice proposing to reopen completed assessment was quashed and set aside. SLP of Revenue is dismissed. (AY. 2012-13)

ITO v. Jagdish Kumar Vitthalbhai Patel (2024) 300 Taxman 96/ 471 ITR 227 (SC)

Editorial: SLP of Revenue is dismissed, Jagdish Kumar Vitthalbhai Patel v. ITO (2023) 151 taxmann.com 121 / 471 ITR 216 (Guj)(HC)

1721 **S. 147: Reassessment-After the expiry of four years-No failure to disclose material facts-Reappreciation of facts-Order of Tribunal quashing the reassessment order is affirmed by High Court-SLP of Revenue is dismissed. [S. 143(3), 148, 154, 260A, Art. 136]**

Dismissing the appeal of the Revenue the High Court held that the fundamental principle of law was that the reason should disclose failure on the part of the assessee to truly and validly disclose material facts necessary for the assessment. From the reasons recorded for reopening the assessment under section 147 for the assessment year 2008-09, it was clear that the material already available in the books of account had been reappraised by the Assessing Officer and notice under section 148 had been issued. In the absence of any such allegations against the assessee the Tribunal was justified in reappreciating the fact to conclude that the reopening of the assessment was bad in law and in setting aside the assessment order under section 147 read with section 154 and section 143(3). SLP of Revenue is dismissed. (AY. 2008-09)

PCIT v. Haldia Petrochemicals Ltd. (2024)467 ITR 571 /300 Taxman 87 (SC)

Editorial : PCIT v. Haldia Petrochemicals Ltd. (2024)467 ITR 159 (Cal)(HC)

1722 **S. 147 : Reassessment-After the expiry of four years-Change of opinion-Capital or revenue-Advertisement and sales promotion expenses-Reassessment notice was quashed-SLP of Revenue is dismissed. [S. 37(1), 148, Art. 136]**

Allowing the petition the Court held that in the course of original assessment proceedings the assessee has furnished party wise details advertisement and sales promotion expenses and purpose of its payment. Also furnished the details of TDS deducted on the said payments. Reassessment proceedings on basis of agreement entered in to by assessee with its dealer in subsequent year to treat the said expenditure as capital in nature is held to be without jurisdiction. The Reassessment proceedings are quashed. SLP of Revenue is dismissed. Question of law is kept open to be considered in an appropriate case. (AY. 2012-13)

ACIT, LTU v. Asian Paints Ltd. (2024) 298 Taxman 752/(2024)466 ITR 281 (SC)

Editorial: Asian Paints Ltd v. ACIT (2022) 285 Taxman 65/ (2024)466 ITR 273 (Bom)(HC)

1723 **S. 147: Reassessment-After the expiry of four years-Cash credits-Partners capital account-No satisfaction was recorded-Reassessment notice and order disposing the objection quashed by the High Court is affirmed-SLP of revenue is dismissed. [S. 68, 148, Art. 136]**

Assessing Officer reopened assessment in case of assessee beyond four years on the ground that the assessee's bank account was credited by by three transactions on various dates from account of Sarathak Enterprises and same amount was debited on same dates to account of Munjal B. Shah and he opined that said amount remained unexplained in hands of assessee. However, communication whereby reasons recorded were supplied, no satisfaction was recorded by Assessing Officer that income chargeable to tax had escaped assessment. From facts it was evident that amount was received by assessee as partners' capital and had a valid source. Assessee had utilised amount for repayment of loan obtained from Munjal B. Shah. s High Court held that question of escapement of income chargeable to tax did not arise and thus, Assessing Officer having misdirected

himself in invoking powers to reopen assessment, reassessment proceeding initiated beyond four years was set aside. SLP of revenue is dismissed (AY. 2013-14)
ITO v. Dhirajlal Gandalal Mehta (2024) 298 Taxman 351/ 471 ITR 65 (SC)
Editorial : Dhirajlal Gandalal Mehta v. ITO(2024) 160 taxmann.com 313 / 471 ITR 58 (Guj)(HC)

S. 147: Reassessment-After the expiry of four years-Creditworthiness-Subsequently converted into share capital-Change of opinion-Reassessment notice and order disposing the objection is quashed and set aside by the High Court-SLP of Revenue is dismissed due to low tax effect. [S. 148, Art. 136] 1724
Assessing Officer completed assessment under section 143(3) accepting declaration made by assessee. After expiry of four years, Assessing Officer sought to reopen assessment. Reason recorded for initiating reassessment proceedings was that companies giving unsecured loan lacked creditworthiness and, moreover, said amount was subsequently converted into share capital with premium. On writ allowing the petition the Court held that advances were squared up on same date and nothing remained outstanding at end of day, much less at end of financial year. Thus, there was no question of such amounts being unsecured loans of company which stood converted into share capital with premium. Moreover, Assessing Officer failed to bring any other evidence on record showing that provisions of section 68 applied to assessee's case. High Court quashed the reassessment notice and order disposing the objection. SLP of Revenue is dismissed due too low tax effect against impugned order was to be dismissed owing to low tax effect. (AY. 2010-11)
ACIT v. Gujarat Television (P.) Ltd. (2024) 298 Taxman 193 (SC)
Editorial: Gujarat Television (P.) Ltd(2018) 94 taxmann.com 400 (Guj)(HC)

S. 147 : Reassessment-After the expiry of four years-Detailed enquiry-No failure to disclose material facts-Change of opinion-Reassessment notice and order disposing the objection is quashed-Order of High Court is affirmed-SLP of Revenue is dismissed. [S. 80IA(4), 80IC, 148, Art. 136] 1725
Allowing the petition the Court held that in the original assessment proceedings the details are called and after enquiry the order was passed allowing the claim under section 80IA of the Act. Reassessment proceedings to withdraw the deduction on the ground that the assesee is not eligible for deduction is not a case of failure to disclose primary facts. Notice of reassessment and order disposing the objection is quashed. Order of High Court is affirmed. SLP of Revenue is dismissed. (AY. 2008-09 to 2011-12)
JCIT v. Kaveri Infrastructure (P.) Ltd. (2024) 298 Taxman 274 / 463 ITR 1 (SC)
Editorial : Kaveri Infrastructure Pvt. Ltd. v. CIT (2023)455 ITR 384 /335 CTR 281/153 taxmann.com 425 (P&H)(HC)

S. 147 : Reassessment-After the expiry of four years-No failure to disclose material facts-Reassessment is barred by limitation-SLP of Revenue is dismissed. [S. 145, 148 Art. 136] 1726
Held that the initiation of reassessment proceedings under section 147 for the assessment year 2011-12 was in excess of jurisdiction and barred by limitation. SLP of Revenue is dismissed. (AY. 2013-14)
ACIT (OSD) v. Durr India (P.) Ltd. (2024) 297 Taxman 58 (SC)
Editorial : Durr India (P.) Ltd v. ACIT (2023) 152 taxmann.com 303/ 455 ITR 460 (Mad)(HC)

1727 **S. 147 : Reassessment-After the expiry of four years-Losses-Capital gains-Losses carried forward-No failure to disclose material facts-Notice must specify facts which had not been disclosed-Notice not valid-SLP is granted to the Revenue. [S. 72, 143(3), 148, Art. 136]**

Allowing the petition the court held that the notice for reopening the Assessing Officer did not mention what was the new tangible material to justify the reopening and what was the material fact which was not truly and fully disclosed. The entire reference in the reasons recorded was only to the material on record. In the absence of any new tangible material available with the Assessing Officer, and in view of the fact that there is a general presumption that an order of assessment under section 143(3) had been passed after proper application of mind and considering the fact that the Assessing Officer had sought clarification with regard to the details of sale of property and transfer of shares, details whereof were submitted during the course of the proceedings, the issue with regard to transactions with all parties had been gone into by the Assessing Officer. There was no failure on the part of the assessee to disclose any material facts and consequently the reopening was invalid in view of the proviso to section 147 of the Income-tax Act. Court also held that when a regular order of assessment is passed in terms of sub-section (3) of section 143 of the Income-tax Act, 1961, a presumption can be raised that such an order has been passed on application of mind. SLP is granted to the Revenue. (AY. 2015-16)

ACIT v. Noshir Darabshaw Talati (2024) 159 taxmann.com 390/ 297 Taxman 390 (SC)

Editorial : Noshir Darabshaw Talati v. ACIT (2023)459 ITR 742 /150 taxmann.com 16 (Bom)(HC)

1728 **S. 147: Reassessment-After the expiry of four years-Different method of accounting-Capital gains-Computation-No failure to disclose material facts-Order of High Court is affirmed-SLP of Revenue is dismissed. [S. 45, 48, 112(1)(c)(ii), 143(3), 148, Art, 136]**

High Court held that the entire transaction had been considered by the Assessing Officer and had culminated in the order under section 143(3) of the Act. As apparent from the reasons there were no new tangible material in the hands of the Assessing Officer. Once the assessment was concluded, it was deemed to have been concluded with application of mind by the Assessing Officer from all perspectives legal and factual. The reopening of the assessment based on a different method of computation or application of the section was nothing else but a change of opinion, which was impermissible in law. The reassessment notice and order disposing the objection was quashed. SLP of Revenue is dismissed. AY. 2015-16))

ACIT v. Lehman Brothers Investments Pte. Ltd. [2024] 461 ITR 360/297 Taxman 61 (SC)

Editorial : Refer Lehman Brothers Investments Pte. Ltd v. (2023) 454 ITR 331/293 Taxman 216/ 333 CTR 213 (Bom)(HC)

1729 **S. 147: Reassessment-After the expiry of four years-Full and true disclosure-Change of opinion-Books seized not returned-Unable to draw balance-sheet-Subsequently drawing the balance sheet-Assessment under section 143(3) of the Act-Return not treated as defective-Subsequent subjective analysis of Assessing Officer that income of assessee was much higher than that assessed-Change of opinion-Reassessments are not justified-**

Once primary facts disclosed by assessee, burden shifts to Assessing Officer-Defective return-Burden on Assessing Officer to intimate defect to Assessee for rectification within time specified-Assessing Officer not exercising discretion-Return cannot be construed as defective burden on Assessing Officer to intimate defect to Assessee for rectification within time specified. [S. 139(9)(f), 145(1), 147, 149(1)(b)(iii)]

Assessee-company is engaged in business of publishing newspapers, weeklies and other periodicals in several languages. It filed its return of income, however, did not file any balance sheet along with return of income on ground that books of account were seized by Income-tax Department in course of search and seizure operations and that those books of account were not yet returned. Assessing Officer initiated reassessment proceeding on basis that increase in capital during relevant year remained unexplained. He made additions to income of assessee in reassessment order. Tribunal quashed the reassessments. On appeal High Court reversed the order of the Tribunal. On appeal the Court held that since returns filed by assessee were accompanied by tentative profit and loss account and other details of income like cash flow statements, statements showing source and application of funds reflecting increase in capital and current accounts of partners of assessee which were duly enquired into by Assessing Officer and Assessing Officer had accepted returns submitted by assessee, it could not be said that assessee had not made full and true disclosure of all material facts necessary for its assessment. On appeal the Court held that Tribunal was justified in coming to conclusion that reassessments for assessment years under consideration were not justified and High Court had erred in reversing such findings of Tribunal. Court also held that if the Assessing Officer does not exercise discretion, return of income cannot be construed as a defective return. (AY. 1988-89 to 1993-94)

Mangalam Publications v. CIT (2024)461 ITR 159 / 297 Taxman 537 /336 CTR 657 (SC)

Editorial : CIT v. Mangalam Publications (2010) 323 ITR 6 (Ker)(HC), CIT v. Biju Varghees (2010) 323 ITR 36 (Ker) (HC), reversed.

S. 147 : Reassessment-After the expiry of four years-No new information-Disclosed all material facts fully and truly-Allegation of paper companies-Order of High Court is affirmed-SLP of Revenue is dismissed. [S. 148, Art. 136] 1730

The High Court quashed a notice of reassessment notice and the order rejecting the assessee's objections to the notice, holding that there was no new material mentioned in the reasons recorded, to believe that income had escaped assessment under section 147, which was not contained in the information provided by the assessee prior to the conclusion of the assessment under section 143(3) in which the Assessing Officer had been satisfied with the details and information provided by the assessee, that an allegation that the companies were "paper companies" without further facts was by itself insufficient to reopen an assessment under section 147, that the primary facts, the existence of the five companies, their subscription to share capital, payment of money to the assessee and the companies being assessed to tax, had not been shown to be false, and that therefore, the assessee could not be said to have failed to disclose fully and truly all the material facts.. On appeal SLP of Revenue is dismissed. (AY. 2008-09)

ACIT v. Sabh Infrastructure Ltd. (2024)461 ITR 339 //297 Taxman 374 (SC)

Editorial : SABH Infrastructure Ltd. v. ACIT (2017) 398 ITR 198 / (2018) 99 taxamnn. com 409 (Delhi)(HC)

1731 **S. 147: Reassessment-After the expiry of four years-Transfer-Capital gains – Development rights-Neither any tangible material nor any reason for Assessing Officer to believe that any income chargeable to tax had escaped assessment-SLP of Revenue is dismissed. [S. 2(47)(v) 148, Transfer of Property Act, 1882, S. 53A Art. 136]**

On writ the Court held that since the assessee had merely granted licence to permit construction on land to such developer but not given any possession in land as contemplated under section 53A of T. P. Act, 1882, there was no transfer as per section 2(47)(v) giving rise to any capital gain in hands of assessee. Notice of reassessment was quashed. SLP of Revenue is dismissed. (AY. 2013-14)

Dy. CIT v. Bharat Jayantilal Patel (2024) 296 Taxman 247 / 462 ITR 455 (SC)

Editorial: Bharat Jayantilal Patel v. Dy. CIT (2023) 292 Taxman 276 (Bom)(HC)

1732 **S. 147: Reassessment-After the expiry of four years-Right shares-Valuation –Change of opinion-Reassessment notice and order disposing the objection was quashed-SLP of Revenue is dismissed. [S. 56(2)(vii)(b), 148, Art. 136]**

Allowing the petition, the Court held that assessment in case of assessee-company was reopened on issue of fair market value (FMV) of rights shares issued by assessee, since Assessing Officer had accepted assessee's method of determining FMV during original assessment and recorded his satisfaction in assessment order, impugned reopening notice issued under section 148 after expiry of four years on mere change of opinion was liable to be set aside. Notice and order disposing the objection was quashed. SLP of revenue is dismissed. (AY. 2015-2016)

ACIT v. Lakshdeep Investment & Finance (P.) Ltd. (2024) 462 ITR 499 / 296 Taxman 573 (SC)

Editorial : Lakshdeep Investments & Finance (P.) Ltd. v. ACIT (2023)455 ITR 639 / 293 Taxman 369 (Bom.)(HC)

1733 **S. 147: Reassessment-With in four years-Change of opinion-Reopening on same set of facts invalid-The reasons assigned for explaining the delay of 489 days in filing SLP are neither satisfactory or sufficient in law for condonation-SLP of Revenue is dismissed. [S. 68, Art. 136]**

The Hon'ble Gujarat High Court quashed the re-opening proceedings holding that the same were based on a set of facts which was already examined during the original assessment proceedings and therefore, there is a change of opinion on the assessing officer's part. Aggrieved, the Department filed a Special Leave Petition before the Hon'ble Supreme Court with a delay of 489 days which was not condoned. Accordingly, the special leave petition was dismissed. (AY. 2012-13)

ACIT v. AIM Fincon (P.) Ltd. (2024) 301 Taxman 169 (SC)

Editorial : AIM Fincon (P) Ltd v. ACIT(2024) 166 taxmann.com 680 (Guj)(HC)

S. 147 : Reassessment –With in four years-Cash credits-Shell companies-Information from Investigation Wing-Recorded reason mechanical manner without application of mind by the Assessing Officer-Mistake-A mistake, which can be corrected under section 292B, should be such that if excised it does not change tenor and scope of documents/ proceedings referred to therein-Order of Tribunal quashing the reassessment order is affirmed by the High Court as no substantial question of law-SLP of Revenue is dismissed as the delay of 213 days is not satisfactorily explained. [S. 68, 143(1), 148, 260A, 292B, Art. 136] 1734

Assessment is reopened on the basis of information from the Investigation wing. Reasons placed on record by Assessing Officer referred to information received by Assessing Officer that assessee had raised a loan from K. J. S. Ahluwalia Group (KG Group) through Tanish Tradecom Pvt. Ltd and Puneet Oils and Chemicals Ltd (TTPL) and POCPL,) which were dubious entities. Court held that there was no reference to how Assessing Officer had, at that juncture, formed a view that they were dubious entities. Reasons did not advert to material that was available to Assessing Officer and which persuaded him to form a belief that income chargeable to tax had escaped assessment. Therefore, reasons recorded lacked necessary jurisdictional prerequisite of reason being recorded, before entering realm of reassessment proceedings. Tribunal rightly held that Assessing Officer had proceeded in a mechanical manner as he had based his decision to reopen his assessment on information received from investigation wing and there was absence of independent application of mind by Assessing Officer. Court also held that a mistake, which can be corrected under section 292B, should be such that if excised (removed) it does not change tenor and scope of documents/proceedings referred to therein i. e., return of income, assessment, notice, summons or other proceedings, taken, furnished or made or issued or taken or purported to have been furnished or made or issued or taken against assessee under provisions of Act. Order of Tribunal is affirmed of High Court on the ground that no substantial question of law. SLP of Revenue is dismissed as the delay of 213 days is not satisfactorily explained. (AY. 2010-11)

CIT v. Spirit Global Construction (P.) Ltd. (2024) 300 Taxman 102 (SC)

Editorial : CIT v. Spirit Global Construction (P.) Ltd (2023) 153 taxmann.com 641 (Delhi)(HC)

S. 147 : Reassessment-Special category states-Assessing Officer applied his mind-Proceeding to reopen assessment was actuated merely by a change of opinion and, hence, impugned notice was set aside-Time limit to issue of notice-Sanction obtained satisfaction of Additional Commissioner, an authority who is not covered by provision of section 151(1), as it stood on 1-1-2019, proceeding initiated against assessee-Issuance of notice under section 148 is held to be not in accordance with law-SLP of Revenue is dismissed on account of gross delay of 294 days. Revenue could not explain the delay satisfactorily. [S. 80IC, 148, 149, 151(1), Art. 136] 1735

Allowing the petition, the Court held that since the assessment was completed under Sections 143(2) and 143(3), the Assessing Officer could not claim that income had escaped assessment. The AO had already considered and accepted the assessee's claim for deduction, and thus reopening the case under Section 148 amounted to a mere change of opinion, which is impermissible. On limitation, the notice dated 1-1-2019

was within the six-year period prescribed under Section 149(1)(b) (as amended by the Finance Act, 2012), and the assessee's challenge on that ground was rejected. However, the AO had obtained sanction from the Additional Commissioner, who is not an authority authorised under Section 151(1) as it stood on 1-1-2019. Therefore, the notice under Section 148 was held invalid for lack of proper sanction. The Revenue's SLP was also dismissed due to an unexplained delay of 294 days. (AY 2014–15)

UOI v. Dhansri Roller Flour Mills (2024) 300 Taxman 106 (SC)

Editorial : Dhansri Roller Flour Mills v. UOI (2023) 293 Taxman 716 /335 CTR 328 / (2024) 460 ITR 326 (Gauhati)(HC)

1736 **S. 147 : Reassessment-Within four years-Audit objection-Question of law-Notice and order disposing the objection was quashed-SLP of Revenue is dismissed. [S. 148, Art. 136]**

On allowing the petition the Court held that the audit party had expressed its opinion on a question of law. It had also pointed it out to the Assessing Officer and that information which had been given was on question of law. The Assessing Officer had in clear terms stated that the objections raised by the audit party had been examined carefully and found to be not acceptable. The Assessing Officer had no subjective satisfaction while issuing the notice of reopening the assessment that income had escaped assessment. The notice of reassessment was not valid. SLP of Revenue is dismissed. (AY. 2017-18)(2016-17)

ACIT v. Adani Power Maharashtra Ltd. (2024)467 ITR 171/ 300 Taxman 363 (SC)

Editorial : Adani Power Maharashtra Ltd. v. ACIT (2023) 454 ITR 720 (Guj)(HC)

1737 **S. 147 : Reassessment –With in four years-Capital gains-Transfer-Redemption of preference shares-Loss-No new material-Reassessment-Reassessment notice and order disposing the objection is quashed-SLP of Revenue is dismissed. [S. 2(47), 47(iv), 148, Art. 226]**

In a writ challenging the notice issued under Section 148 for AY 2015–16 and the order rejecting the assessee's objections, the High Court held the reassessment invalid. It found that Section 47(iv) did not apply to the redemption of preference shares, as such redemption results in extinguishment of rights, amounting to a transfer under capital gains provisions. The Court noted that no new tangible material had emerged after the original assessment under Section 143(3); the reopening was based solely on material already considered. Additionally, there were inconsistencies between the reasons provided to the assessee and the unsigned, undated reasons cited in the objection order. Since the assessee had claimed capital loss arising from the extinguishment of rights on redemption—not from a sale—the reassessment notice was issued without a proper understanding of facts. Accordingly, both the notice and the rejection of objections were quashed. The Revenue's SLP was dismissed. (AY 2015–16)

NFAC v. The Great Eastern Shipping Co. Ltd. (2024)463 ITR 152 (SC)

Editorial: The Great Eastern Shipping Co. Ltd v. NFAC (2024) 463 ITR 145 (Bom)(HC)

S. 147 : Reassessment-With in four years-General allegation-No violation of provisions of S. 11(3)(d)-Charitable purpose-Donation to hospital-No violation of provisions of sections 11(2), 11(3)(d) of the Act –SLP of Revenue is dismissed, order of High Court quashing the reassessment notice is affirmed. [S. 10(23C), 11(2), 11(3(d), 12AA, 148, Art. 136] 1738

The assessee, a charitable institute, received certain donations that were either placed in fixed deposits or bank accounts, accruing interest. The Assessing Officer contended that this income was not utilized for the purposes specified in the Act and that contributions made to CIMS Hospital were in contradiction with provisions, as CIMS Hospital was neither registered under Section 12AA nor covered under Section 10(23C). The High Court held that there was no material or evidence for the Assessing Officer to conclude that the assessee had violated Section 11(3)(d). Consequently, the issuance of notice under Section 148 was quashed and set aside. The Supreme Court, after reviewing the facts and circumstances, dismissed the Special Leave Petition (SLP). (AY. 2016-17)

DCIT v. Areez Khambatta Benevolent Trust [2024] 462 ITR 3 /299 Taxman 182 (SC)

Editorial : Areez Khambatta Benevolent Trust v. Dy. CIT(2019) 415 ITR 70/ (2020) 191 DTR 326/ (2024) 161 taxmann.com 527 (Guj)(HC)

S. 147 : Reassessment-With in four years-corporate social responsibility expenses-Reopening was without application of mind-Reassessment notice and order disposing the objection is quashed-SLP of Revenue is dismissed. [S. 148, Companies Act, 2013, S. 135 Art. 136] 1739

Allowing the petition the Court held that since Co-ordinate Bench of Gujarat High Court in assessee's own cases for preceding year and succeeding year, Adani Power Maharashtra Ltd. v. ACIT (2023) 292 Taxman 475 / 147 taxmann.com 583 (Guj)(HC) in similar situation found action of reopening without independent application of mind. Accordingly the notice and order disposing the objection is quashed and set aside. SLP of Revenue is dismissed. (AY. 2016-17)

ACIT v. Adani Power Maharashtra Ltd. (2024) 297 Taxman 394 / 460 ITR 729 (SC)

Editorial : Adani Power Maharashtra Ltd v. ACIT (2023) 294 Taxman 414 (Guj)(HC)

S. 147: Reassessment-Audit objection-Notice based on audit objection-Special Leave petition dismissed. [S. 148, Art. 136] 1740

The High Court allowed the assessee's writ petition against an order of reassessment holding that there was no independent application of mind by the Assessing Officer while issuing notice which was based solely on an audit objection. SLP of Revenue is dismissed. (AY. 2016-17)

Asst. CIT v. Adani Power Maharashtra Ltd. (2024)460 ITR 729/297 Taxman 394 (SC)

Editorial: Adani Power Maharashtra Ltd v. Asst. CIT(2024) 460 ITR 720 (Guj)(HC)

S. 147 : Reassessment-Double taxation avoidance agreements-Tax Residency Certificate granted by another country-Binding on Income-Tax Authorities in India-Notice of reassessment is not valid-DTAA-India-Singapore-Notice issued in SLP filed by the Revenue-SLP granted to the Revenue. [S. 90(2), 133(6), 148, Art. 13(4) Art. 136] 1741

Allowing the writ petition against the reassessment notice, the Court held that the assessee had a valid tax residency certificate dated February 3, 2015 from the Inland

Revenue Authority of Singapore evidencing that it was a tax resident of Singapore and thereby was eligible to claim tax treaty benefits between India and Singapore. The tax residency certificate is statutorily the only evidence required to be eligible for the benefit under the Double Taxation Avoidance Agreement and the respondent's attempt to question and go behind the tax residency certificate was wholly contrary to the Government of India's consistent policy and repeated assurances to foreign investors. In fact, the Inland Revenue Authority of Singapore had granted the assessee the tax residency certificate after a detailed analysis of the documents, and the Indian Revenue authorities could not disregard it as that would be contrary to international law. Accordingly the tax residency certificate issued by the other tax jurisdiction was sufficient evidence to claim treaty eligibility, residence status, legal ownership and accordingly the capital gains earned by the assessee was not liable to tax in India. No income chargeable to tax had escaped assessment and the notice of reassessment was not valid. Notice issued in SLP filed by the Revenue. SLP is granted to the Revenue. (AY. 2016-17)

ACIT v. Blackstone Capital Partners (Singapore) Vi Fdi Three Pte. Ltd (2024) 297 Taxman 223 (SC)

ACIT v. Blackstone Capital Partners (Singapore) Vi Fdi Three Pte. Ltd (2024) 297 Taxman 387 (SC)

Editorial : Blackstone Capital Partners (Singapore) Vi Fdi Three Pte. Ltd. v ACIT (IT) (2023)452 ITR 111/ 331 CTR 1/222 DTR 265 / 146 taxmann.com 569 (Delhi)(HC)

1742 **S. 147 : Reassessment –With in four years-Redemption of preference shares-Provisions of section 47(iv) are not applicable to redemption of preference shares-Order of Assessing Officer allowing the loss is affirmed-SLP of Revenue is dismissed. [S. 2(47) 47, 47 (iv), 47(v), 148, Art. 136]**

The assessee had purchased preference shares of Flagship company during year-2008-09 and sold these preference shares during assessment year-2015-16 and claimed long-term capital loss which was allowed. The reassessment notice was issued on ground that long-term capital loss should be disallowed as transaction was not regarded as transfer within meaning of section 47(iv) and (v). On writ allowing the petition the Court held that the assessee had not sold preference shares but same were redeemed by company, and due to extinguishment of rights, capital loss was claimed, jurisdictional conditions for issuance of reopening notice were not satisfied and reassessment was quashed. SLP of Revenue is dismissed. (AY. 2015-16)

NFAC v. Great Eastern Shipping Co. Ltd. (2024) 296 Taxman 575 (SC)

Editorial : Great Eastern Shipping Co. Ltd v. NFAC (2023) 157 taaxmann.com 442 (Bom)(HC)

1743 **S. 147: Reassessment-After the expiry of four years-No failure to disclose material facts-Purchase of land-Reassessment notice and order disposing the objection is quashed and set aside. [S. 69C, 147, 153A, Art. 226]**

Assessee created special purpose vehicle (SPV) company namely, Allcargo Logistics Limited in joint venture with two companies which purchased a land for project of ship building yard undertaken by assessee. A search was conducted upon Allcargo

Logistics Limited group of companies which also included assessee being MD of a company. During search it was found that said SPV of assessee had issued cheques to various entry providers as capital expenditure for purchase of land but same was received in form of cash by assessee Assessee had engaged Vasudev Ramdas Thacker, a land broker for acquiring land and obtained bogus bills for generating cash by way of accommodation entries. Accordingly, assessment was completed under section 143(3) read with section 153A Thereafter, a reopening notice was issued upon assessee on ground that Allcargo Logistics Limited had issued cheques to Vasudev Ramdas Thacker and cash was received by assessee but assessee did not disclose said transaction. On writ the Court held that there was no any failure on part of assessee to disclose fully and truly material facts during regular assessment. Non furnishing of details of bank account maintained by a different legal entity, namely, Allcargo Logistics Limited that had been made basis for reopening of assessment by assessee could not be said failure on part of assessee to make full disclosure. There was no tangible material with Assessing Officer, which would form a basis for his 'reason to believe' that payments made to Vasudev Ramdas Thacker a resulted in generation of cash, which ultimately found its way to assessee. On facts reopening of notice and order disposing the objection is quashed and set aside. (AY. 2019-20)

Shashikiran Janardhan Shetty v. ACIT (2023)153 taxmann.com 472 / (2024) 471 ITR 528 (Bom) (HC)

S. 147: Reassessment-After the expiry of four years –Capital gains-Authority for Advance ruling-Ruling would apply and be binding only on applicant-Subsequent ruling on other assessee cannot be the basis for reopening of the assessment-DTAA-India-UAE [S. 9(1)(i), 148, 245R, 245S, Art. 4, 10, 11. 13(3)] 1744

Assessee is a resident of UAE, had invested in shares and debentures issued by Indian companies as well as units issued by mutual funds registered in India. She made an application to AAR seeking a ruling on taxability as well as rate at which tax was payable on income earned by him by way of dividends, interest and capital gains from sources in India. AAR came to conclusion that assessee was resident of UAE in terms of article 4 and was not liable to any tax in UAE and taxability of capital gains on transfer of movable assets in India would be governed by article 13(3) and, hence, same would not be taxable in India. The assessee filed her return claiming benefit of DTAA and assessment was completed accordingly The Assessing Officer issued notice u/s 148 on the ground that AAR in assessee's case had pronounced its ruling on basis of its earlier ruling in case of *Mohsinally Alimohammed Rafik v. CIT (1995) 79 taxman 75 / 213 317 (AAR).* Subsequently AAR in its subsequent ruling in case of *Cyril Eugene Pereira v. CIT (1999) 105 Taxman 273/ 239 ITR 650(AAR)* came to conclusion that benefit of DTAA would not be applicable as applicant was not chargeable to tax in UAE. On writ the Court held that as per section 245S a ruling would apply and be binding only on applicant and revenue in relation to transaction for which it is so sought, subsequent ruling could not as a matter of plain intendment and meaning of section 245S displace binding character of ruling rendered between applicant. The Assessing Officer had exceeded his jurisdiction in initiating reassessment notice is quashed. (AY. 1997-98 to 2000-01)

Usha Eswar (Mrs.) v. Rajeshwari Menon, ITO (2023) 152 taxmann.com 454 /(2024) 470 ITR 200 (Bom) (HC)

1745 **S. 147: Reassessment-After the expiry of four years-No failure to disclose material facts –Change of opinion-Notice based on Audit objection-Reassessment notice and order disposing the objection is quashed [S. 55, 148, Art. 226]**

Allowing the petition the Court held that the notice of reassessment had been issued after four years. There was nothing in the notice of reassessment to spell out failure on the part of the assessee to disclose fully and truly all material facts. The assessee had disclosed all primary facts. It was clear from the notice that on account of an internal audit objection a remedial action of reopening the assessment by action under section 148 of the Act was taken. The notice and order disposing the objection is quashed. (AY. 2015-16)

Bharat Amratlal Shah v. ITO (2024)470 ITR 322 (Bom)(HC)

1746 **S. 147: Reassessment-After the expiry of four years-No failure to disclose material facts-Reassessment is not valid. [S. 148, Art. 226]**

Held, that no specific reasons were given nor was there discovery of new material in the reasons to show a failure on the part of the assessee to disclose material facts necessary for assessment. Moreover, a query was raised with regard to the sale of the shop and the details were called for and the queries were answered by the assessee. The notice of reassessment dated March 29, 2021 and the order dated February 17, 2022 were quashed. (AY. 2013-14)

Bhoomi Construction Projects v. ITO (2024)469 ITR 547 (Bom)(HC)

1747 **S. 147: Reassessment-After the expiry of four years-No failure on the part of the assessee to disclose fully and truly all material facts necessary for the assessment-Reopening of the completed assessment on the basis of same set of facts and on mere change of opinion based on an internal audit of the Revenue's functioning held illegal and quashed-Sanction is given without application of mind-Reassessment is quashed. [S. 148, 151, Art. 226]**

During the course of original assessment, the assessee's case entailed active examination and scrutinization lead to the addition of Rs. 10 Crores against the total income offered in the return of income. The AO during the course of original assessment proceedings verified and scrutinized the four aspects set out in the reasons recorded for reassessment. The four issues contained in the reasons for reassessment i. e. the claim of expenditure towards improvements to the leasehold properties, amortization of investments, claim of donation and interest expenses were dealt with by the AO in depth during the original assessment proceedings. However, the reopening initiated based on an internal audit of the Revenue's functioning which is a mere change of opinion. The Hon'ble Court observed that an essential ingredient of the first proviso to section 147(1) provides that no action for reassessment can be taken after the expiry of four years from the end of the relevant assessment year, unless, there is a failure on the part of the assessee to disclose fully and truly all material facts necessary for the assessment, it is a jurisdictional imperative, the Court further observed that the assessee had disclosed all the material facts fully and truly during the original assessment through the audited books of accounts and auditor's report, duly considered by the AO during the original assessment and thus, the jurisdiction to reopen the concluded

assessment has been assumed on mere change of opinion, having the same set of facts and there is no failure on the part of the assessee to disclose truly and fully all the material facts necessary for the assessment. Court held that since the original assessment had been concluded pursuant to scrutiny proceedings and all the four aspects set out in the reasons for reassessment, fully disclosed by the assessee in the original assessment, the reopening of assessment is on mere change of opinion, on same set of facts, arbitrary and illegal and therefore, reassessment proceedings were liable to be quashed. Referred, *Hindustan Lever Ltd. v. R. B. Wadkar (2004) 137 Taxman 479/268 ITR 332 (Bom) (HC)* (AY. 2015-16)
Saraswat Co-operative Bank Ltd. v. ACIT (2024) 301 Taxman 90 (Bom)(HC)

S. 147: Reassessment-After the expiry of four years-Development agreement-Capital gain tax-Granted a licence to developer-Issue was consideration before the Assessing Officer-No failure to disclose material facts-Reassessment notice and order disposing the objection is quashed. [S. 2(47)(v), 45, 148, Transfer of Property Act, 1882, S. 53A, Art. 226] 1748

The assessee's case was selected for scrutiny and it received notice under section 143(2). During relevant year, the assessee, along with other co-owners, entered into a Development Agreement with SA for developing land in Chikhloli, Ambernath. In the assessment proceedings under section 143(3), the assessee submitted a copy of the Development Agreement to the Assessing Officer. The Assessing Officer questioned whether the Development Agreement should be treated as the 'transfer of the land,' potentially resulting in capital gains. The assessee responded, explaining that the Development Agreement did not constitute a transfer of the land, citing relevant legal provisions. The Assessing Officer accepted this explanation, and the assessment order under section 143(3) was issued, without making any capital gains addition. However, other additions were made to the petitioner's total income. After four years, the assessee received a notice under section 148, indicating that the assessing authority believed the assessee's income for the assessment year 2013-14 had escaped assessment under section 147. The assessee also received a notice under section 142(1) and was provided with the recorded reasons for reopening the assessment. The assessee raised detailed objections in response to these notices, which came to be disposed of by order dated 14-2-2022. On writ petition, the assessee challenged this order and the notice issued under section 148. Allowing the petition the Court held that once a query is raised during the assessment proceedings and the assessee has replied to it, it follows that the query raised was the subject of consideration of the Assessing Officer while computing the assessment. It is not necessary that an assessment order should contain reference and/or discussion to disclose its satisfaction in respect of the query raised. This would also indicate that there was no failure to disclose any material fact. Notice and order disposing the objection is quashed and set aside. (AY. 2013-14)
Darshana Anand Damle v. Dy. CIT (2023) 295 Taxman 240/ 459 ITR 60(Bom)(HC)
Editorial : SLP of Revenue is dismissed, Dy. CIT v. Darshana Anand Damle (2024) 300 Taxman 108 / 469 ITR 27 (SC)

1749 **S. 147: Reassessment-After the expiry of four years-Depreciation-Subject matter of appeal-Third proviso-Reassessment notice and order disposing the objection is quashed. [S. 11,32, 148, Art, 226]**

Allowing the petition the Court held that since the grant of benefit of S. 11 was the subject-matter of appeal and has been held in favour of assessee, the matter cannot be reopened. As regards the issue of disallowance of depreciation claim, the apex Court in *CIT v. Rajasthan & Gujarat Charitable Foundation (2018) 300 CTR 1 / 161 DTR 33 (SC)* has held that a charitable trust is eligible for claiming depreciation. This was also a subject-matter of the appeal that was preferred by assessee against the assessment order. Reopening was not therefore sustainable. Reassessment notice and order disposing the objection is quashed. (AY. 2008-09)

Shri Shanmukhananda Fine Arts & Sangeetha Sabha v. DY. DIT(E) (2024) 337 CTR 114 (Bom)(HC)

1750 **S. 147: Reassessment-After the expiry of four years-Capital gains-Sale consideration-Division of income between spouses and not assets for capital gains-Portuguese Civil Code-Notice based on wrong facts and erroneous reasons-Notice and order disposing the objection is quashed. [S. 5A, 50C, 133A, 148, Art. 226]**

The Court held that the assessee's husband, who passed away in 1986, could not be covered under Section 5A, which applies only to income division between living spouses governed by the Portuguese Civil Code, not to asset division. The Department was already aware that his rights were governed by the Portuguese Civil Code, and mere omission of this in the assessee's return did not justify taxing her for more than her rightful share. His share in the property had devolved equally to the children upon his death—an undisputed fact on record. The Department's claim that a copy of the sale deed was unavailable at the time of reopening was found to be legally untenable, as such deeds are automatically transmitted from the Sub-Registrar to the tax authorities. The sale deed was on record and should have been considered when rejecting the assessee's objections. The Department's reasoning—that Section 5A did not apply due to the husband's non-disclosure—was clearly incorrect. Therefore, the reassessment notice under Section 148 and the rejection of objections were quashed due to jurisdictional errors. (AY 2015–16)

Sunita Purushottam Virgincar (Smt.) v. ITO (2024)466 ITR 238/164 taxmann.com 352 (Bom)(HC)

1751 **S. 147: Reassessment-After the expiry of four years-No failure to disclose material facts-Change of opinion-Transaction in shares-Live link between belief and material in possession is not established-Reopening on suspicion is impermissible. [S. 148, Art. 226]**

Allowing the petition, the Court held that once a query is raised by the Assessing Officer during assessment proceedings and a reply is submitted by the assessee, it must be presumed that the issue was duly considered, even if not explicitly discussed in the final assessment order. It is not necessary for the order to record a detailed finding on every issue raised. The Court further observed that there was no "live link" between the material available with the Assessing Officer and the belief that income

had escaped assessment, which is a mandatory requirement under Section 147 of the Income-tax Act. The recorded reasons merely made a vague and general reference to the assessee's alleged share transactions on the stock exchange, without furnishing any details, supporting evidence, or the source of such information. Although the issue was not discussed in the original assessment order for AY 2013–14, the fact that queries were raised and adequately addressed by the assessee showed that the matter was already under consideration during the original proceedings. Therefore, the reopening of the assessment was based purely on a change of opinion, which is not a valid ground for invoking reassessment. Additionally, the reasons recorded did not indicate any failure on the part of the assessee to fully and truly disclose all material facts. In the absence of these jurisdictional requirements, the reassessment proceedings and the notice issued under Section 148 after four years were held to be invalid and unsustainable. (AY 2013–14)

Vibrant Securities Pvt. Ltd. v. ITO (2024)465 ITR 531/161 taxmann.com 243 (Bom) (HC)

S. 147: Reassessment-After the expiry of four years-Neither reasons recorded nor order rejecting objections showing receipt chargeable to tax-Reassessment is held to be not valid-Capital gains-Transfer-Partner in firm-Bequeathed by father-Consent terms-Arbitration Award-Relinquishment of interest in partnership-Not transfer not liable to capital gains tax-Family arrangement-Not taxable-Onus on Department to establish certain receipt as income-Income from other sources-Firm continuing as going business with other partners-Receipts is not chargeable as income from other sources or as damages on dissolution of firm. [S. 2(24), 2(47), 45, 45(4), 56(2), 148] 1752

The assessee, holding a 25% share in a firm established by her late father, discovered in 2005 that she had been shown as retired from the firm following its reconstitution in 1997, without her knowledge. She initiated arbitration, and in 2009 was awarded ₹ 28 crores in full settlement of all claims, including those under her father's will. This amount was taxed in reassessment proceedings for AY 2010–11, which were upheld by appellate authorities. The High Court quashed the reassessment, holding that the reasons recorded failed to show how the ₹ 28 crore constituted taxable income. The Deputy Commissioner's claim that ₹ 7 crore was unrelated to the assessee's retirement was unsupported and contradicted the treatment of similar non-taxable receipts in AY 2008–09, amounting to an impermissible change of opinion. The Assessing Officer's reliance on missing documents like the arbitration award and will—absent from the original reasons—indicated a mere intent to investigate, not a belief based on new material. Under Section 147, reopening after four years requires fresh, tangible evidence of income escaping assessment, which was lacking. The ₹ 28 crore, received under a family arbitration award settling partnership and inheritance claims, was a capital receipt and not taxable unless it clearly falls within the scope of "income" under Section 2(24), which includes no concept of "special income." Although the consent terms and award did not explicitly state the assessee's retirement, the settlement—where she relinquished her rights in the firm—clearly reflected her exit from the partnership. The absence of a capital balance was irrelevant, given the firm's substantial assets and profitability. The Tribunal erred in holding the award unrelated to her retirement. Even if part of the amount related to inheritance, it is not taxable, as bequests are excluded

under Section 56(2)(vii) and estate duty is not applicable. Likewise, if viewed as part of a family arrangement to resolve disputes, the receipt remains a non-taxable capital sum. Even if treated as damages, the ₹ 28 crore arose from partnership and inheritance disputes, making it a capital receipt. Section 45(4) was inapplicable since no capital assets were distributed, and any tax liability would rest with the firm, not the assessee. The Department failed to prove the amount was income under Section 2(24) or taxable under Section 56(1). Simply rejecting the assessee's explanation without establishing the nature of the receipt is inadequate. As the partnership continued after the father's death, with no dissolution, and the award stemmed from a family settlement and retirement, the amount remained a non-taxable capital receipt. This view is supported by rulings in *CIT v. D. P. Sandu Bros. Chembur (2005)142 Taxman 713/273 ITR 1 (SC), CIT v. Mohanbhai Pamabhai (1987) 165 ITR 166 (SC), Tribhuvandas G. Patel v. CIT (1999) 236 ITR 515 (SC), and Prashant S. Joshi v. ITO (2010)189 Taxman 1/324 ITR 154 (Bom)(HC) Pinto v. Dy. CIT (2023) 156 taxmann.com 282/ (2024) 464 ITR 305 / 336 CTR 543 (Bom) (HC)*

1753 **S. 147: Reassessment-After the expiry of four years-No failure to disclose material facts-Notice based on report from Department of Revenue Intelligence-Shah Commission report-No independent application of mind By Assessing Officer-Based on subsequent decision of Supreme Court-Notice is not valid. [S. 148, Art. 226]**

Allowing the petition, the Court held that the Assessing Officer failed to establish a valid reason to believe that income had escaped assessment. Merely quoting excerpts from the Third Shah Commission Report and the Directorate of Revenue Intelligence (Mumbai) without applying his independent mind or linking the material to the assessee's case amounted to a jurisdictional error. The notice under section 148 was issued on October 20, 2014, for AY 2008–09—beyond four years—triggering the requirement to show failure by the assessee to fully and truly disclose material facts. However, this condition was not met. The illegality of the mining leases beyond November 22, 2007, was only established by the Supreme Court in 2014; hence, neither the assessee nor the Department could have known of this at the time of filing returns for AYs 2008–09 and 2011–12. Thus, the reassessment was unjustified. (AY. 2008–09, 2011–12)

Sociedade De Fomento Industrial Pvt. Ltd. v. ACIT (2024) 464 ITR 261 (Bom)(HC)
Shantilal Khushaldas and Brothers v. ACIT (2024) 464 ITR 261 (Bom)(HC)

1754 **S. 147: Reassessment-After the expiry of four years-No failure to record reasons-Reasons offered at later stage cannot be considered-Notice and order disposing the objection is quashed. [S. 148, Art. 226]**

Allowing the petition the Court held that the jurisdictional parameters prescribed in the proviso to section 147 that the assessee failed to disclose fully and truly all material facts necessary for assessment, were not fulfilled. There was no allegation in the notices or the reasons furnished that the assessee had failed to disclose fully and truly all material facts necessary for assessment for the assessment year 2015-16 or that there was suppression of income resulting in escapement from assessment. Such failure was a jurisdictional parameter which must have been fulfilled to sustain the notice issued

for reassessment under section 148 after the expiry of four years from the end of the relevant assessment year. The justification belatedly offered in the order rejecting the assessee's objections could not be regarded as a valid defence of the notice under section 148. The notice and order rejecting the assessee's objections were quashed and set aside. (AY. 2015-16)
Teofilo Fernando Antonio Pinto v. UOI (2024) 464 ITR 249 (Bom)(HC)

S. 147: Reassessment-After the expiry of four years-Amalgamation-Reassessment orders passed under section 144 read with section 147 in name of non-existing entity is quashed and set aside. [S. 144, 148, 292B, Art. 226] 1755
Pursuant to a scheme of amalgamation, Sterlite Energy Limited (SEL) stood amalgamated with assessee with effect from appointed date being 1-1-2011. Scheme and order approving amalgamation also provided for dissolution without winding up of SEL. Consequently, from 1-1-2011, SEL ceased to exist. Assessee during course of assessment proceedings for assessment year 2011-12, brought to notice of Assessing Officer scheme of amalgamation and arrangement. Further, fact that amalgamation had taken place was known to department because same was referred to in assessment order for assessment year 2013-14. Allowing the petition the Court held that reopening notices issued under section 148 and reassessment orders passed under section 144 read with section 147 in name of non-existing entity, i.e., SEL, would not be sustainable and same were to be quashed and set aside. (AY. 2013-14, 2014-15)
Vedanta Ltd. v. ACIT (2024) 299 Taxman 218 (Bom.)(HC)

S. 147: Reassessment-After the expiry of four years-Capital gains-Income Declaration Scheme, 2016-Change of opinion-Reassessment notice and order disposing the objection is quashed. [S. 148, Art. 226] 1756
Assessing Officer issued a notice under section 148 on the ground that there was no disclosure of long-term capital gains (LTCG) on sale of shares and that assessee would have paid brokerage/commission, therefore, income chargeable to tax had escaped assessment within meaning of section 147. On writ the Court held that the assessee had declared LTCG on shares of SAL and cash income in declaration under Income Declaration Scheme, 2016 and a certificate under section 183 of the Finance Act, 2016 was also issued to assessee. It was also found that assessee had disclosed LTCG on sale of shares, purchase of equity shares of SAL, sale of those shares and gain in computation of income filed by assessee. In response to notice issued under section 142(1), assessee gave entire details relating to transactions in shares of SAL and even in assessment order, long-term capital loss, short-term capital loss, etc. were discussed. It was also recorded in assessment order that capital gain was nil. Court held that reopening was merely on basis of change of opinion of Assessing Officer and this change of opinion did not constitute justification and/or reason to believe that income chargeable to tax had escaped assessment accordingly the notice and order disposing the objection is quashed. (AY. 2014-15)
Gaurang Manhar Gandhi v. ACIT (2024) 298 Taxman 452/(2025) 474 ITR 105 (Bom.)(HC)

1757 **S. 147: Reassessment-After the expiry of four years-Capital gains-No failure to disclose material facts-Notice and order disposing the objection is quashed. [S. 45, 148, Art. 226]**

Assessee and her spouse were joint owners of a flat which was sold and composite long-term capital loss was computed. Assessing Officer had accepted loss as booked by assessee. Reassessment proceeding is initiated on the ground that instead of a loss there was a capital gain. On writ the Court held that since notice was issued after expiry of four years from end of relevant assessment year and there was no failure on part of assessee to disclose truly and fully material facts and issue regarding capital loss on sale of said flat was subject of assessment proceedings, it was a clear case of change of opinion and reopening of assessment is unjustified. (AY. 2015-16)

Jean Ibrahim Somji v. ITO (IT) (2024) 298 Taxman 700 (Bom.)(HC)

1758 **S. 147: Reassessment-After the expiry of four years-Cash deposits-Sales are offered to tax-Certificate from bank confirming the cash deposit-Reassessment notice and order disposing the objection is quashed. [S. 68, 148, Art. 226]**

Reassessment notice was issued on basis of information that assessee had made cash deposits of 3. 74 crores in its bank account which had escaped assessment. Assessee pointed out that there was duplicity as there was only one bank account where only Rs. 1. 87 crores had been deposited in cash which represented cash sales and had been offered to tax. Bank also issued a certificate that deposit was made of Rs. 1. 87 crores. Assessing Officer instead of dealing with this duplicity had simply stated that those details would be considered during reassessment proceedings and he had also not dealt with assessee's assertion in objections that those amounts deposited in cash had been offered to tax. On writ allowing the petition the Court held that there could be no reason for Assessing Officer to believe that income chargeable to tax had escaped assessment. Accordingly the notice and order disposing the objection is quashed. (AY. 2013-14)

BIC Cello (India) (P.) Ltd. v. ACIT (2024) 298 Taxman 617 /(2025) 475 ITR 463 (Bom.)(HC)

1759 **S. 147: Reassessment-After the expiry of four years-Cash credits-Shell companies-Bogus purchases-No failure to disclose material facts-Reassessment notice and order disposing the objection is quashed. [S. 68, 143(3), 148, Art. 226]**

Assessing Officer reopened on the ground that reasons recorded for reopening stated that investigation was initiated by DG GST on two companies Meher and Nyles Sales Agencies Pvt Ltd in course of which it was found that both companies were shell companies and entire sales and purchases of both companies appeared to be fraudulent and bogus and assessee company was one of beneficiary entities who made transactions with company Nyles Sales Agencies Pvt Ltd. On writ the Court held that the assessee did have financial transactions with company Nyles Sales Agencies Pvt Ltd but assessee had taken a loan from company Nyles Sales Agencies Pvt Ltd and not made any payment to company Nyles Sales Agencies Pvt Ltd or supplied any goods to company Nyles Sales Agencies Pvt Ltd Further, it was found that in annexure to the Form No. 3CD, assessee has disclosed that it had taken loan from Nyles Sales Agencies Pvt Ltd along with Nyles Sales Agencies Pvt Ltd PAN number and balance sheet of assesse also

indicates Long Term Borrowings. Since there was no allegation in reasons recorded that there was any failure on part of assessee to truly and fully disclose all material facts necessary for its assessment for relevant assessment year. Notice and order disposing the objection is quashed. (AY. 2015-16)
Feng Shui Realtors (P.) Ltd. v. ITO (2024) 298 Taxman 7/(2025) 475 ITR 447 (Bom.)(HC)

S. 147 : Reassessment-After the expiry of four years-Revision order-Pendency of proceedings-Sanction is bad in law-Reassessment order is quashed. [S. 143(3), 151, 151, Art. 226] 1760
Assessment is completed under section 143(3) of the Act. Subsequently Pr. Commissioner passed an order passed under section 263 setting aside assessment order passed under section 143(3) with a direction to Assessing Officer to verify issues mentioned in order. Assessing Officer during pendency of assessment proceedings following directions given by Pr. Commissioner issued on assessee a notice under section 148. On writ the Court held that income cannot be said to have escaped assessment within meaning of section 147 if assessment proceedings in respect of that income and/or issue are still pending and have not culminated into a final order. So long as assessment proceedings in respect of certain income subsists, income could not be said to have escaped assessment. Proceedings initiated under section 148 were held to be void and illegal. (AY. 2015-16)
Sahana Dwellers (P.) Ltd. v. NFAC (2024) 298 Taxman 670/ (2025) 474 ITR 93 (Bom.)(HC)

S. 147: Reassessment-After the expiry of four years-Transfer pricing-Purchase-Import of raw materials-No failure to disclose material facts-Change of opinion-Reassessment notice and order disposing the objection is quashed. [S. 92C, 148, Art. 226] 1761
Assessee filed its return of income and assessment was completed accordingly. Assessing Officer issued a reopening notice after expiry of period of four years from relevant assessment year on ground that assessee had imported certain raw materials being off patents APIs from its AE by paying prices far exceeding ALP and, therefore, income had escaped assessment. AO had relied upon third party prices to hold that assessee made excess payment. On writ the Court held that there was nothing to indicate that assessee was aware of prices at which third party companies had imported said raw material. Further, transfer pricing study as submitted by assessee was accepted by TPO and based on said order, Assessing Officer had completed assessment and, thus, there was nothing to indicate that there was any failure on part of assessee to truly and fully disclose any material facts. Court held that reopening of assessment was merely on basis of change of opinion and unjustified. Reassessment notice and order disposing the objection is quashed. (AY. 2007-08)
Sanofi India Ltd v. Dy. CIT (2024) 298 Taxman 232/ (2025) 474 ITR 114 (Bom)(HC)

S. 147 : Reassessment-After the expiry of four years-Industrial undertakings-Infrastructure development - Port facility-Compensation in respect of damages to wharf –Change of opinion-Reassessment notice and order disposing the objection is quashed. [S. 80IA, 148, Art. 226] 1762
Assessee-company was engaged in business of port facility In previous assessment years, assessee received compensation in respect of damages to wharf and same was partly

shown in capital account and balance in revenue account. In relevant assessment year, assessee claimed its entire income as deduction under section 80-IA. During scrutiny, Assessing Officer asked for information related to income qualifying for deduction and after considering relevant information disclosed by assessee allowed claim. Subsequently, a reopening notice was issued by Assessing Officer on ground that assessee had credited its profit and loss account with respect to compensation received for loss of profit and damages to wharf. On writ the Court held that the financial statements mentioned amount received as compensation towards damages to wharf the reasons to believe escapement of income revealed that reopening of assessment was based on examination of financial statements furnished by assessee. Since Assessing Officer had all primary facts to make necessary inquiry and had relied on financial statements and other documents furnished by assessee itself for reason to believe that income had escaped assessment, reopening was on basis of change of opinion hence reassessment notice and order disposing the objection is quashed. (AY. 2013-14)
Chennai Container Terminal (P.) Ltd. v. ACIT (2024) 297 Taxman 405 /463 ITR 574 (Bom.) (HC)

1763 **S. 147: Reassessment-After the expiry of four years-No failure on the part of the assessee to disclose fully and truly all material facts-Notice and order disposing the objection is quashed and set aside [S. 10AA, 148, Form No 56F, Art. 226]**
AO issued notice under section 148 so as to reopen assessment after expiry of four years from the end of the relevant assessment year for the reason that perusal of the case records revealed that the assessee had claimed deduction under section 10AA in respect of its SEZ unit operating from Airoli and submitted Form No. 56F, without the signature, seal, membership number of the Chartered Accountant. Thus, said form could not be treated as valid. Thus, assessee was not eligible to claim deduction under section 10AA since its unit was formed by splitting up of or reconstruction of its business, which was already in existence. Assessee challenged the notice taking plea of proviso to section 147. The notice conveying 'reasons to believe' for reopening itself cited profit and loss statement and notes to the financial statements in relation to SEZ point which was already before AO during the original assessment proceedings. The notice also recorded that assessee had furnished Form No. 56F, copy of return of income along with the computation of income in which deduction under section 10AA was claimed. The facts that assessee was conducting its operations from STP unit and SEZ unit was also evident in the Notes to Accounts forming part of the financial statements furnished by assessee during assessment proceedings. There was thus, no failure on part of assessee to make a full and true disclosure during original assessment proceedings and, therefore, reopening beyond four years was hit by proviso to section 147 and, therefore, reassessment notice and order disposing the objection is set aside. (AY. 2015-16)
CitiusTech Healthcare Technology v. Dy. CIT [2024] 461 ITR 249 (Bom) (HC)

1764 **S. 147: Reassessment-After the expiry of four years-No failure on the part of assessee to disclose fully and truly all material facts-Notice and order disposing the objection is set aside. [S. 54, 54F, 148, Art. 226]**
AO issued a notice under section 148 so as to reopen the assessment after expiry of four years from the end of relevant assessment year so as to disallow exemption claimed

by assessee under sections 54 and 54F. Assessee challenged the notice by way of writ petition taking plea of proviso to section 147. Assessee, during original assessment proceedings, had furnished substantive information and answered specific queries raised by AO who had clearly applied his mind while computing capital gains and exemption under sections 54 and 54F after forming a view. Hence, it was held that this was a clear case of change of opinion which was impermissible in law and thus there was no failure on the part of the assessee to disclose fully and truly all material facts necessary for the assessment. Therefore, a reassessment notice and order disposing the objection is set aside. (AY. 2015-16)

Ashraf Chitalwala v. Dy. CIT (2023)295 Taxman 174/ [2024] 461 ITR 235 (Bom HC)

S. 147: Reassessment-After the expiry of four years-Accommodation entries-Internal information-No live link between material and belief-Change of opinion-Reassessment notice and order disposing the objection is quashed. [S. 143(3), 148, Art. 226, Evidence Act, 1872, S. 103] 1765

Allowing the petition the court held that there was no failure on the part of the assessee to disclose truly and fully all the material facts in the scrutiny assessment under section 143(3). The assessee had explained the transactions done through the note submitted along with the profit and loss account and other supporting documents. There was no live link or nexus with the orders passed by the Securities and Exchange Board of India as alleged by the Department which had failed to aver the particulars of the information available that had led to the belief that income had escaped assessment under section 147. There was no new tangible material available on record. Therefore, the notice issued under section 148 and the order rejecting the assessee's objections were quashed and set aside. *Raymond Woollen Mills Ltd v. ITO (1999) 236 ITR 34 (SC)*, considered. (AY. 2015-16, 2016-17)

Prabhat Properties Pvt. Ltd. v. ACIT (2024)461 ITR 390 (Bom)(HC)

S. 147: Reassessment-After the expiry of four years-Change of opinion-Amalgamation-Set-Off of loss and unabsorbed depreciation in amalgamation-Audit objection not accepted-Notice and order rejecting objections is set aside. [72A(4), 143(3), 148, Art. 226] 1766

Allowing the petition the Court held that the same Assessing Officer had not accepted the audit objections in the original assessment under section 143(3). Therefore, it was clear that the Assessing Officer had issued the notice under section 148 on the ground of direction issued by the audit party and not on his personal satisfaction which was not permissible under law. The very same Assessing Officer had submitted a proforma report on the draft audit proposed to be included in the audit report by the Comptroller and Auditor General to the Principal Commissioner during the original assessment when he was of the opinion that the claim of the assessee had claimed correctly and that the set-off of business loss and unabsorbed depreciation pertaining to the amalgamating company was correctly allowed as per the provisions of section 72A(4) and not as per the provisions of section 72A(1) as mentioned in the audit observation sheet. In less than 45 days, the very same Assessing Officer had relied on the same audit objection, stating that he had reasons to believe that the assessee's income chargeable to tax had

escaped assessment under section 147 on that account. The assessee had given the full particulars and the stand taken by the assessee was also accepted by the Department on the merits. The Assessing Officer who had disagreed with the audit objections in the original assessment on second thoughts had accepted the audit objections and had sought to reopen the assessment without any basis but merely on a change of opinion which was not permissible while exercising the powers under section 147 read with section 148. Accordingly, the notice issued under section 148 and the order rejecting the objections of the assessee were quashed and set aside. (AY. 2015-16)
Bennett Coleman and Co. Ltd. v. Dy. CIT [2022] 145 taxmann.com 228 / (2024)460 ITR 345 (Bom)(HC)

1767 **S. 147: Reassessment-After the expiry of four years-Audit objection-Reply by the Assessing Officer-Change of opinion-Reassessment notice and order disposing the objection. is quashed. [S. 32AC, 143(3), 148, Art. 226]**
Held that there was no hint in the reasons to reopen that there had been a failure by the assessee to truly and fully disclose material facts. The reason itself indicated that everything had been disclosed because it stated that on perusal of the records that the assessee was allowed the deduction under section 32AC of the Act. Moreover, during the course of assessment proceedings, the assessee was told to provide a detailed break-up of various plants and machinery installed and commissioned pursuant to section 32AC of the Act. The assessee provided the details and also forwarded the details which were called for during the hearing held on September 22, 2016, of installation date item-wise in respect of the plant. In the order disposing of the objections, there was no denial of the fact that these materials were made available or these details were called for during the assessment proceedings. The only explanation was that these had not been discussed in the assessment order. The Assessing Officer himself had replied to the audit objection raised denying that there was any escapement of income. In the letter dated March 4, 2021, it was stated audit objection/observation was not acceptable to the Department. When the primary facts necessary for the assessment were fully and truly disclosed, the Assessing Officer was not entitled on change of opinion to commence proceedings for reassessment. Reassessment notice and order disposing the objection is quashed. (AY. 2014-15)
DCW Ltd. v. ACIT (2024) 460 ITR 357 (Bom)(HC)

1768 **S. 147: Reassessment-After the expiry of four years-No failure to disclose material facts-Reassessment notice and order disposing the objection is quashed. [S. (2(22)(e), 148, Art. 226]**
Allowing the petition the Court held that when the assessee had made full and true disclosures of all the details as required by the AO during the original assessment proceedings, such as details of loans taken and shareholding by the assessee in the companies from which the loan was taken–It was the duty of the AO to draw the relevant inferences based on the disclosures–the assessment could not be reopened beyond the period of four years because AO had the reasons to believe that undisclosed income under S 2(22)(e) has escaped assessment because the assessee had not disclosed the percentage of shareholding–Held, once all the primary facts are before the assessing

authority, it requires no further assistance by way of disclosure. Reassessment notice and order disposing the objection is quashed. (AY. 2006-07)
Noshir Darabshaw Talati v. Dy. CIT (2024) 296 Taxman 133 / 462 ITR 37 (Bom)(HC)

S. 147: Reassessment-After the expiry of four years-Change of opinion-Direction of Audit party-Amalgamation-AO issued notice on the ground of directions issued by the audit party-Being not on AO's personal satisfaction, reopening of assessment without any basis, merely on change of opinion and not permissible in law-Reassessment notice and order disposing the objection is quashed. [S. 72A(4), 148, Art. 226] 1769
The assessee company filed the return of income, subsequently revised, which was selected for scrutiny under CASS and the assessment was completed u/s 143(3). Later on, the notice u/s 148 issued after the period of four years from the end of the relevant assessment year-the objections raised by the AO-demonstrates the opinion of the AO that the petitioner's claim for set off of business loss and unabsorbed depreciation had correctly been allowed as per the provisions of the law. However, in less than 45 days, the same AO, relying on the same audit objection, invoked the jurisdiction u/s 148 of the Act. Allowing the petition, the Court held that the notice issued by the AO on the ground of directions issued by the audit party and not in his personal satisfaction is not permissible in law. *Larsen & Toubro Ltd. v. State of Jharkhand (2017) 79 taxmann.com 267 (SC)/ (2017) 13 SCC 780; CIT (LTU) v. Reliance Industries Ltd. (2017) 80 taxmann. com 242 / (2016) 382 ITR 574 (Bom.) and IL and FS Investment Managers Ltd. v. ITO (2008) 298 ITR 32 (Bom.)* followed. (AY. 2015-16)
Bennett Coleman & Co. Ltd. v. DCIT (2022) 145 taxmann.com 228 (2024) 460 ITR 345 (Bom)(HC)

S. 147: Reassessment-After the expiry of four years-No failure to disclose material facts-Capital Gains–Full value of consideration–Stamp Duty Valuation-Reassessment notice and order disposing the objection is quashed. [S. 45, 50C, 148, Art. 226] 1770
Allowing the petition the Court held that the market value determined by the collector for the payment of stamp duty was more than the sale consideration. The Assessee challenged the market value determined. The Government of Andhra Pradesh, by notification, reduced the valuation. AO finalised the Order based on the value as per the said notification. Since AO had all the information required to finalise the order. The Assessing Officer issued notice under section 148 of the Act. On writ the Court held that there was never a failure from assessee to truly and fully disclose material facts. Hence, assessment could not be reopened under S. 147. Accordingly the reassessment notice and order disposing the objection is quashed. (AY. 2006-07)
Pfizer Ltd v. UOI (2024) 296 Taxman 2(Bom)(HC)

S. 147: Reassessment-After the expiry of four years-Cash credits-Partners capital account-No satisfaction was recorded-Reassessment notice and order disposing the objection quashed is quashed. [S. 68, 131(IA), 148, Art. 226] 1771
Assessing Officer reopened assessment in case of assessee beyond four years on the ground that the assessee's bank account was credited by by three transactions on various dates from account of Sarathak Enterprises and same amount was debited on same dates

to account of Munjal B. Shah and he opined that said amount remained unexplained in hands of assessee. However, communication whereby reasons recorded were supplied, no satisfaction was recorded by Assessing Officer that income chargeable to tax had escaped assessment. From facts it was evident that amount was received by assessee as partners' capital and had a valid source. Assessee had utilised amount for repayment of loan obtained from Munjal B. Shah. High Court held that question of escapement of income chargeable to tax did not arise and thus, Assessing Officer having misdirected himself in invoking powers to reopen assessment, reassessment proceeding initiated beyond four years was set aside. (AY. 2013-14)

Dhirajlal Gandalal Mehta v. ITO (2024) 471 ITR 58 /160 taxmann.com 313 (Guj) (HC)

Editorial: SLP of Revenue is dismissed, ITO v. Dhirajlal Gandalal Mehta (2024) 298 Taxman 351 (SC)

1772 **S. 147: Reassessment-After the expiry of four years-Capital gains-Co-owner-No failure to disclose material facts-Reassessment notice and order disposing the objection is quashed. [S. 45(3) 50C, 148, Art. 226]**

Assessee an individual derived income from different sources including share in partnership firm Assessment was completed u/s 143(3) of the Act.. The assessement was reopened. On writ the Court held that notice proposing to reopen completed assessment is quashed and set aside. (AY. 2012-13)

Jagdishkumar Vitthalbhai Patel v. ITO (2023) 471 ITR 216 /151 taxmann.com 121 (Guj) (HC)

1773 **S. 147 : Reassessment-After the expiry of four years-Audit information-Same material-New tangible material-Reassessment notice and order disposing the objection is quashed. [S. 80IC, 143(3), 148, Art. 226]**

Allowing the petition the Court held that the law postulates a duty on every assessee to disclose fully and truly all material facts for its assessment. The disclosure must be full and true. Material facts for initiating action under S. 147 would essentially mean those facts, if taken into account, would have an adverse effect on the assessee by the higher assessment of income than the one actually made. They ought to be proximate and not have any remote bearing on the assessment. Omission to disclose could be deliberate or even inadvertent. However, this is not at all relevant provided there is omission or failure on the part of the assessee. The latter confers jurisdiction to reopen the assessment. (AY. 2013-14)

J. B. J. Perfumes (P) LTD. v. PCIT (2024)163 taxmann.com 740/ 341 CTR 611 /242 DTR 518 / 471 ITR 609 (HP) (HC)

1774 **S. 147: Reassessment-After the expiry of six years-Accumulation of income-No failure to disclose material facts-Change of opinion-Reassessment notice and order disposing the objection is quashed. [S. 11(3A) 12AA, 148, Form No 10, Art. 226]**

The assessee, a charitable society registered under Section 12AA, had accumulated funds in compliance with Section 11(3A) for constructing buildings on its land and duly filed Form 10. However, due to the sale of its properties, the society sought permission from the Deputy Commissioner to utilize the accumulated funds for purchasing land

instead. During regular assessment, the assessee disclosed this change in purpose, and the Assessing Officer accepted it while completing the assessment. Over six years later, the AO issued a notice under Section 148, alleging violation of Section 11(3A) for diverting funds from the declared purpose. The High Court, in a writ petition, held that the assessee had fully and truly disclosed all material facts and the reassessment was merely based on a change of opinion, which is not permissible. The notice was therefore quashed. (AY 2009–10) (SJ)
St. Mary's Charity Fund v. UOI (2024) 301 Taxman 205 (Ker)(HC)

S. 147: Reassessment-After the expiry of four years-Cash credits-No failure to disclose material facts-Reassessment notice and order disposing the objection is quashed and set aside. [S. 68,147, Art. 226] 1775

The Petitioner had challenged a notice under section 148 of the Act and the consequential assessment order by way of a Writ Petition. The Hon'ble Delhi High Court on basis of the records observed that, there was no allegation or any material to indicate or even remotely suggest that assessee had earned income chargeable to tax which was camouflaged as an unsecured loan and reflected in the books of accounts. The Hon'ble Court further noted that there is no reason to even suspect that the balance sheet of the assessee did not correctly reflect its state of affairs. In such circumstances, there was a failure to meet the necessary conditions for initiating re-assessment under section 147 of the Act. Therefore, the impugned notice as well as the consequential assessment order were set aside. (AY. 2012-13)
Alankar Promoters LLP v. ITO (2024) 469 ITR 150 / 167 taxmann.com 594 (Delhi)(HC)

S. 147: Reassessment-After the expiry of four years-Business connection-Survey-Failure to deduct tax at source-Except for one, all other affiliates did not have a Permanent Establishment in India-Reassessment notice and order disposing the objection is quashed OECD Model Convention-Art. 5. [S. 9(1)(i)), 40(a(i), 133A, 148, 195, 201(1), Art. 226] 1776

Assessee-company is engaged in business of manufacturing and selling of cars in India. It filed its return of income which was accepted and an assessment order was passed. Subsequently, a survey was conducted upon assessee and on basis of same, reassessment proceedings were initiated against assessee on ground that non-resident parent company and its affiliates had a business connection and a PE in India and, thus, assessee was liable to deduct tax under section 195 on payments made by it to them and since assessee had failed to do so, provisions of section 40(a)(i) were attracted and amount claimed as expenditure was liable to be disallowed under section 40(a)(i). On writ the Assessee submitted that subsequent order dated 10-12-2018 passed under section 201(1) found that except for one, all other affiliates did not have a PE in India. On writ reassessment proceedings initiated against assessee were quashed and set aside. (AY. 2006-07, 2007-08)
Honda Cars India Ltd. v. DCIT (2024) 301 Taxman 653 (Delhi)(HC)

1777 **S. 147: Reassessment-After the expiry of four years-Cash credits-Notice under section 148 issued relying on the information received from investigation wing without making any further inquiry-Notice is void ab initio. [S. 68, 148, Art. 226]**
The Hon'ble High Court held that there is no 'close nexus' or 'live link' between tangible material and the reason to believe that income has escaped assessment. The information received from the Investigation Wing cannot be the sole basis for forming a belief that income has escaped assessment. Having received information from the Investigation Wing, it was incumbent upon the Assessing Officer to take further steps, make further enquiries and garner further material and if such material indicate that the income of the assessee has escaped assessment and then form a belief that the income of the assessee has escaped assessment. As the AO has not acquired any such material to form the reason to believe that any income has escaped assessment, impugned notice issued under section 148 of the Act is bad in law. (AY. 2011-12)
Well Trans Logistics India (P.) Ltd. v. Addl. CIT (2024) 301 Taxman 11/ (2025) 474 ITR 131 (Delhi)(HC)

1778 **S. 147: Reassessment-After the expiry of four years-Agricultural land-Capital gains-No new tangible materials or evidences-Change of opinion-Reassessment notice and order disposing the objection is quashed. [S. 45, 54B, 54F, 143(3), 148, Art. 226]**
The assessee had sold the agriculture land during the relevant year and claimed the deduction u/s 54B and 54F against the capital gain earned on transfer of such agriculture land. The case of the assessee was selected for scrutiny, the assessee submitted the series of evidences in support of the deductions claimed under both the sections and considering the submissions/explanations from the assessee in response to the specific SCN issued on the very issue of the deductions claimed as well the material available on records, the AO passed the order u/s 143(3) fully allowing the deductions claimed u/s 54B and 54F, without disturbing the original return of income filed. Then after, the AO assumed the jurisdiction u/s 148 on the ground that the assessee has not fulfilled the conditions prescribed for claiming deduction u/s 54B and 54F of the Act. In appreciation of the materials available on the records, the Hon'ble Court held that this is not the case that the assessee failed to disclose fully and truly all the material facts necessary for the assessment, that the reopening based on the material already on records, it is nothing but a mere change of opinion and not permissible in the eyes of law. The Hon'ble Court further observed that issuance of notice u/s 148 should be based on the reasons to believe which should have direct nexus with any new information and/or tangible material which has come to the knowledge of the Revenue authorities based on assessment proceedings. Accordingly, the Court held that the notice u/s 148 falls within the category of change of opinion was to be quashed. (AY. 2015-16)
Kiritbhai Parshottambhai Patel v. ACIT (2024) 301 Taxman 219 (Guj)(HC)

1779 **S. 147: Reassessment-After the expiry of four years-notice under section 148 issued to examine the issue already verified during the course of assessment proceedings-No failure on the part of assessee-Notice is invalid. [S. 28(i), 148, Art. 226]**
In this case the Hon'ble High Court held that during regular assessment the details of land cost was duly furnished in response to the query of Assessing Officer and after

considering the same, assessment order was passed. Thus, reopening notice issued on the ground that the assessee had estimated net profit on cost of construction but had not included cost of land in cost of construction is bad in law as there is no failure on part of assessee to disclose truly and fully all material facts. Reassessment notice and order disposing the objection is quashed. (AY. 2012-13)
Aavkar Projects (Tragad LLP) v. Dy. CIT (2024) 301 Taxman 122 / (2025) 475 ITR 151 (Guj.)(HC)

S. 147: Reassessment-After the expiry of four years-Bogus bills-Accommodation entries-Book profit-Adding the amount calculated by Assessing Officer towards escaped income amount computed under ordinary provision of Act amounted would be less than the amount paid as per book profit-Notice and order disposing the objection is quashed. [S. 115JB, 143(3), 148, Art. 226] 1780
In this case the court held that as the assessee had paid tax on book profit under section 115JB and by adding amount calculated by AO towards escaped income to amount computed under ordinary provisions of Act aggregate amount would be less than said amount of tax paid by assessee, question of any income having escaped would not arise and, therefore, impugned reassessment notice is unjustified. (AY. 2014-15, 2015-2016, 2016-17)
Adani Wilmar Ltd. v. ACIT (2024) 301 Taxman 84 (Guj.)(HC)

S. 147: Reassessment-After the expiry of four years-No failure to disclose material facts-G. P rate of unrecorded transactions were recorded at 7. 5% as against G. P rate of 12. 5 % in respected recorded transactions-Reassessment notice and order disposing the objection is quashed. [S. 143(3), 148, Art. 226] 1781
The Hon'ble High Court held that the AO issued the impugned notice under section 148 beyond the period of four years to reopen the assessment completed under section 143(3) of the Act without making any allegation of suppression of income or non disclosure of income from unrecorded sales. Hence, there is no failure on the part of the assessee which could give reasons to believe to AO to reopen the assessment. Thus, the impugned notice is bad in law and the same is set aside. (AY. 1999-2000, 2000-01)
Susheel Kumar Shankarlal v. ITO (2024) 301 Taxman 61 (MP)(HC)

S. 147: Reassessment-After the expiry of four years-Capital asset –Agricultural land-Agricultural and situated beyond municipal limits, same did not come within ambit of section 2(14)(iii)(a)-No capital gain is liable to be taxed. [S. 2(14)(iii)(a), 45, 143(3), 144, 148, Art. 226] 1782
Assessee had purchased agricultural land from three brothers and later on sold same to company DSS Mega City Projects. As land being agricultural land and not a capital asset, it was not eligible to tax and no income was taxable which was verified by ITO Intelligence in its verification report. Assessing Officer had passed an assessment order under section 143(3) without making any additions. for undisclosed. Later on reassessment notice was issued upon assessee on ground that source and genuineness of investment made as well as short term capital gain (STCG) received by assessee remained unexplained and, therefore, income to extent of Rs. 19. 34 crores had

escaped assessment. Accordingly, he had passed an order under section 144 read with section 147 making addition of Rs. 19. 34 crores. On writ the Court held that since no document was produced by respondents to show that they had any new information or documentary evidence for reopening of case, ITO could not be allowed to merely reopen assessments already finalized based on his opinion that earlier assessment was wrongful or that he had a reason to suspect that assessment was done wrongfully. Even otherwise, since land was agricultural and situated beyond municipal limits, same did not come within ambit of section 2(14)(iii)(a), no capital gain was liable to be taxed. (AY. 2013-14)
Dinesh Singla v. ACIT (2024) 301 Taxman 432 (P&H)(HC)

1783 **S. 147: Reassessment- After the expiry of four years-Search and Seizure-Trust-Wholly-Capitalisation fee-Statement of managing trustee under oath accepting receipts of capitation fee- Order of Settlement Commission for subsequent year- Order of Tribunal quashing the reassessment is held to be erroneous and set aside. [S. 10(23C)(iv), 11, 12, 12A, 12AA, 132, 148, 245D(6), 260A]**
The Court, while allowing the Revenue's appeal, held that the Assessing Officer had valid and cogent reasons to initiate reassessment proceedings under Section 147 of the Income-tax Act. It found that the Tribunal erred in deeming the reassessment proceedings invalid. The assessee did not dispute charging capitation fees, as evidenced by seized documents. The Tribunal's decision to invalidate the reassessment based on discrepancies in the quantum of capitation fees was incorrect, as such differences do not justify setting aside proceedings at the notice stage under Section 148. The Court noted that the material seized during the search under Section 132, along with admissions by the assessee's managing trustee, provided sufficient fresh evidence to warrant reassessment for the AY 2007-08, and the Tribunal should not have interfered with the reopening of the assessment. (AY. 2007-08)
PCIT v. Maharaji Education Trust (2024) 166 taxmann.com 197 (2024)468 ITR 634 (Delhi) (HC)

1784 **S. 147: Reassessment-After the expiry of four years-Unexplained money-Information from the ADIT (Investigation)-Purchases and sale of commodities through National Multi-Commodities Exchange (NMCE platform)-Borrowed satisfaction-Not valid in the eyes of law-Non application of mind-Reassessment notice and order disposing the objection is quashed. [S. 69A, 148, Art. 226]**
Assessing Officer received information that assessee had made purchases and sale of commodities through NMCE platform, resulting in a profit. The AO held that the assessee's return of income did not reflect this profit, leading to the belief that income had escaped assessment. The Assessee contended that reassessment was based on incorrect facts. The Court held that the profit is already reflected in assessee's records and bank statements. In such circumstances, it could be said that reasons so recorded and notice under section 148 is nothing but a sheer non application of mind by revenue and therefore quashed and set aside. Relied on *Kapdia Money Changers (P) Ltd v. ACIT (2019) 108 taxmann.com 275/ 266 Taxman 160 (Guj)(HC).* (AY. 2012-13)
Toral Hemanshubhai Shah v. Asst. CIT (2024) 300 Taxman 196 (Guj.)(HC)

S. 147: Reassessment-After the expiry of four years-Depreciation –Foreign exchange fluctuations on imported machinery- Project development- Change of opinion-Reassessment notice and order disposing of the objection is quashed. [S. 32, 115JB, 148, Art. 226] 1785

The assessee is engaged in developing, operating, and maintaining power projects, which had filed its income tax return for the assessment year 2014-2015, declaring significant losses under both normal provisions and under section 115JB. The case was selected for scrutiny, and during the assessment, the Assessing Officer disallowed an excess depreciation claim.

On appeal, the Commissioner (Appeals) partly allowed the appeal.

Later, the AO issued a notice under section 148 to reopen the assessment for the same assessment year, citing reasons related to the depreciation claim, particularly concerning the foreign exchange fluctuation on imported machinery. On writ, the Court held that there is no failure on part of the assessee to disclose fully and truly all material facts relevant for assessment in absence of any allegation or even remote reference to that effect made in the reasons recorded. On perusal of the assessment order under section 143(3), the Assessing Officer in the regular course of assessment has considered the issue of depreciation and has chosen to make addition only on the point of depreciation claimed on depreciation on the project development phase which clearly shows that the Assessing Officer after considering the claim of entire depreciation has made addition only on excess depreciation claimed by the assessee on the above issue. Accordingly, the reassessment notice and order disposing of the objection is quashed. (AY. 2014-15)

Adani Power Ltd. v. ACIT (2024) 300 Taxman 484 (Guj.)(HC)

S. 147: Reassessment-After the expiry of four years-Income from other sources-Interest income-Credit for Tax deducted at source-Change of opinion-No failure to disclose material facts-Reassessment notice and order disposing the objection is quashed. [S. 56, 143(3), 148, Art. 226] 1786

Assessing Officer issued reassessment notice on ground that assessee did not claim TDS credit corresponding to interest income and, hence, assessee had not offered income corresponding to unclaimed TDS and assessee's income for the year under consideration had escaped assessment. On writ, the Court held that during original assessment, Assessing Officer raised a query calling upon assessee to explain as to why TDS credit corresponding to interest income was not claimed by assessee. Assessee explained that TDS was deducted on interest given on electricity security deposit in respect of a unit of assessee which was sold by assessee to one SAPL and had also transferred electricity connection, however, due to procedural time consumed in transferring name of electricity connection in name of said company, bills of electricity charges were issued in name of assessee and even interest advice was also issued in name of assessee after deducting TDS. There was no failure on part of assessee to fully and truly disclose all material facts during assessment for year under consideration. Since the Assessing Officer on same material arrived at a reason to believe that income had escaped assessment impugned reopening notice was a mere change of opinion on part of the Assessing Officer. Accordingly, the notice and order disposing the objection is quashed. (AY. 2015-16)

Rushil Decor Ltd. v. Asst. CIT (2024) 300 Taxman 432 (Guj.)(HC)

1787 **S. 147: Reassessment-After the expiry of four years-Capital gains-No failure to disclose material facts-Reassessment notice and order disposing the objection is quashed. [S. 48, 148, Art. 226]**

Assessee along with five co-owners bought land into partnership firm. Return was selected for scrutiny and regular assessment was completed under section 143(3) of the Act. Thereafter assessment was sought to be reopened on ground that share of assessee did not match with the transaction shown by assessee. Notice under section 142(1) had been issued and various details had been called for furnishing purchase/sale deed of property sold during relevant year. Assessment order passed under section 143(3) also stated that source of income of assessee was partnership share income and assessee had also shown income from short term capital gain. The objections filed by assessee against the reopening of assessment were rejected. Assessee challenged the reopening notice before the High Court and contended that there was a full and true disclosure of all materials before the Assessing Officer, and hence, the action of reopening would stand barred. The court held that although for the name sake, it has been mentioned that there is failure on the part of the petitioner to disclose truly and fully all material facts. It is quite apparent from the record that not only in response to the notice issued under section 142(1), but all particulars have been furnished by the petitioner at the time of finalizing the assessment. Resultantly, this petition warrants interference at the end of the Court. This petition is allowed, reassessment notice and order disposing the objection is quashed. (AY. 2012-13)

Jagdish Kumar Vitthalbhai Patel v. ITO (2023) 151 taxmann.com 121 /471 ITR 216 (Guj) (HC)

Editorial : SLP of revenue dismissed, ITO v. Jagdish Kumar Vitthalbhai Patel (2024) 300 Taxman 96/ 471 ITR 227 (SC)

1788 **S. 147: Reassessment- After the expiry of four years-Industrial undertakings-Infrastructure development-Manufacturing and cut of polished diamond on job work basis and trading of diamonds and power generation through windmill – Amalgamation-No failure to disclose material facts-Reassessment notice and order disposing the objection is quashed and set aside. [S. 80IA(4)(iv) 143(3), 148, Form No. 10CCB, Art. 226]**

Assessee-company is engaged in the business of manufacturing and cutting of polished diamond on job work basis and trading of diamonds and power generation through windmill. The Assessee claimed deduction under section 80IA. Return was processed and assessment was completed under section 143(3). Re assessment notice was issued on ground that during assessment year 2017-18, one windmill, i. e., power generating unit of assessee which was claimed as eligible unit for deduction under section 80IA(4)(iv) was not originally owned by assessee-company but same was an undertaking of amalgamating company which was transferred under scheme of amalgamation with assessee. On writ the Court held that since the assessee had duly disclosed all material facts during original assessment proceedings and Assessing Officer had examined claim under section 80IA(4)(iv) in detail by raising various queries which were duly answered by assessee and observation of Assessing Officer was based on assessment

records, reopening notice issued beyond a period of four years is unjustified and the reassessment order was set aside. (AY. 2014-15)
Facets Gems Polishing Works (P.) Ltd. v. Dy. CIT (2024) 300 Taxman 168/ 471 ITR 674 (Guj.)(HC)

S. 147: Reassessment-After the expiry of four years-Unexplained expenditure –Prior period items and advertisement expenses- No new tangible material- Quashing of reassessment by the Tribunal is affirmed. [S. 69C, 148, 260A] 1789

Assessing Officer passed reassessment order on account of prior period items, receivables and advertisement expenses. On appeal, Commissioner(Appeals) upheld reopening of assessment on ground that factum of giving away 75 vehicles to its dealers as commission for achieving sales targets and incentives was not disclosed by assessee and same impedes the requirement of true and full disclosure at time of original assessment. On appeal the Tribunal quashed the Reassessment proceedings. On appeal the High Court affirmed the order of the Tribunal on the ground that there is no failure to disclose material facts. The order of Tribunal is affirmed. No substantial question of law. (AY. 2002-03)
PCIT v. Samsung India Electronics (P.) Ltd. (2024) 300 Taxman 21/ (2025) 475 ITR 70 (Delhi)(HC)

S. 147: Reassessment-After the expiry of four years-No failure to disclose material facts-Reappreciation of facts-Order of Tribunal quashing the reassessment order is affirmed. [S. 143(3), 148, 154, 260A] 1790

Dismissing the appeal of the Revenue the Court held that the fundamental principle of law was that the reason should disclose failure on the part of the assessee to truly and validly disclose material facts necessary for the assessment. From the reasons recorded for reopening the assessment under section 147 for the assessment year 2008-09, it was clear that the material already available in the books of account had been reappraised by the Assessing Officer and notice under section 148 had been issued. In the absence of any such allegations against the assessee the Tribunal was justified in reappreciating the fact to conclude that the reopening of the assessment was bad in law and in setting aside the assessment order under section 147 read with section 154 and section 143(3). (AY. 2008-09)
PCIT v. Haldia Petrochemicals Ltd. (2024)467 ITR 159 (Cal)(HC)
Editorial : SLP of revenue dismissed, PCIT v. Haldia Petrochemicals Ltd. (2024) 467 ITR 571 (SC)

S. 147 : Reassessment-After the expiry of four years- Survey-Suppression of sales-Information of Investigation Wing of Sales-Tax Department-Failure to make independent Inquiry by Assessing Officer-Reassessment is invalid. [S. 133A, 143(3), 148, 260A] 1791

Dismissing the appeal of the Revenue the Court held that the Assessing Officer had proceeded solely on the basis of what had come to be recorded in the course of the sales tax survey. The Assessing Officer had not only failed to independently examine those allegations, but had abjectly failed to enquire and ascertain the status of the proceedings under the sales tax statute. If that had been done, he would have found

that there existed no outstanding demands or orders of assessment against the assessee on the basis of the survey which had been originally conducted on the date when the notice under section 148 was issued. The Tribunal had recorded that on December 30, 2010 the original order of assessment itself had been set aside by the appellate authority and the matter was remitted to the Assessing Officer under the sales tax enactment for making a fresh assessment and that till date no fresh assessment under the Sales-tax Act had been made. The Commissioner of Income-tax (Appeals) had taken a view on a "prima facie" formation of opinion to uphold the reassessment proceedings under section 147. On the facts, the Tribunal was justified in holding that the reopening of the assessment under section 147 by the Assessing Officer was without application of mind and hence invalid. (AY. 2005-06)
PCIT v. Hari Steels and General Industries Ltd. (2024)467 ITR 248 (Delhi)(HC)

1792 **S. 147: Reassessment- After the expiry of four years- Borrowed satisfaction-Accommodation entry- Information supplied by Investigation Wing- Bogus sales, purchases, fictitious loans etc-Notice and order disposing the objection is quashed. [S. 68, 148, Art. 226]**
Allowing the petition the Court held that it is well-settled position of law that reason to belief that the income has escaped assessment has to be on the sole reasonable belief of the AO himself and cannot be an opinion and/or belief of some other authority. It is expected of the AO that though the information/material is received from other sources, the AO is required to consider the material on record in case of assessee by applying his independent mind and upon appreciation of such information/material on record, the AO is further expected to form his independent opinion to arrive at satisfaction which constitutes "reason to believe" that income of the assessee, which otherwise was chargeable to tax has escaped the assessment for any assessment year. Entire base for reopening assessment is on the premise that there was 'Information' supplied by the Investigation Wing and the AO has made cursorily reference to high value transaction of Rs. 26,42,027 as well as also referred to accommodation entry entered upon by the assessee-company by way of bogus sales/purchases/fictitious loans etc. Thus, the reason for reopening of the assessment in the case of assessee-company by the AO is based on the borrowed satisfaction and the AO has not applied his independent mind to arrive at the conclusion that there was a failure on the part of the assessee to disclose fully and truly all material facts. Reopening was not therefore sustainable. Accordingly, the notice and order disposing the objection is quashed. (AY. 2014-15, 2015-16)
Surani Steel Tubes Ltd. v. ITO (2022) 136 taxmann.com 139/ (2024) 337 CTR 84 (Guj) (HC)

1793 **S. 147: Reassessment-After the expiry of four years-No failure to disclose material facts-Bad debt-Specific question was raised in the course of assessment proceedings-Change of opinion-Reassessment notice and order disposing the objection is quashed and set aside. [S. 36(1)(vii), 142(1), 148, Art. 226]**
Allowing the petition the Court held that on the basis of very same material which was made available during the course of the assessment proceeding, the authority has come out with a case that this figure of Rs. 24.63 crores deserves to be added and for that

purpose reopening tried to be justified. So essentially there is no tangible material or fresh material on the basis of which an attempt is made to reopen the assessment and undisputedly this figure of controversy was very much placed by the assessee before AO and while passing assessment order, the AO has not made any addition and as such on the basis of very same material, now a view is taken by an authority that this figure deserves to be added and as such this amounts to a change of opinion which is not permissible. The notice as well as the order are hereby quashed and set aside. Followed, *Anupam Rasayan India Ltd. v. ITO (2016) 76 laxmann.com 39 (Guj)(HC)) Shanti Enterprise v ITO (2016) 76 taxmann.com 184 (Guj) (HC) and Vodafone Idea Ltd. v. Asstt. CIT (2022) 325 CTR 241/ 211 DTR 99(Bom) (HC)* (AY. 2015-16)
Axis Bank Ltd. v. ACIT (2024) 336 CTR 206 (Guj) (HC)

S. 147 : Reassessment-After the expiry of four years-Faceless Assessment –Best judgment-Statement of accommodation entry provider-Search and seizure-Bogus financial transactions-No live nexus between material relied and belief formed-The name of the assessee was not mentioned in the statement recorded-Reasons recorded cannot be supplemented by assessment order or affidavit-Best judgement assessment-No relevant material with the Assessing Officer-Assessment order is quashed. [S. 132(4), 144, 144B, 147, 148, Art. 226] 1794

The Assessing Officer reopened the assessment based solely on the statement of a third party, who claimed to provide accommodation entries, alleging the assessee as a beneficiary. Additions were made to the assessee's income and penalty was levied under Section 271(1)(c) of the Income-tax Act, relying on this statement. Upon writ, the Court held that there was no tangible material or live nexus between the information relied upon and the belief formed for reopening the assessment. The statement did not mention the assessee by name, nor was there any evidence that the assessee paid cash to obtain accommodation entries. The use of terms such as "accommodation entry" and "bogus financial transactions" in the recorded reasons were deemed conclusions rather than substantive reasons. The Court further observed that the assessment order did not specify the provision under which the additions were made, and the reasons recorded were inappropriately supplemented by the assessment order. There was no clarity regarding the relevant assessment year or the section under which the statement was recorded. The Court reiterated that reasons for reopening cannot be supplemented by subsequent orders or affidavits. Therefore, the Court observed that the assessment order was based on conjecture and lacked relevant material, rendering it contrary to the requirements of Section 144 governing Best Judgment Assessment. Reassessment order is quashed. (AY. 2015-16)
Pasari Casting and Rolling Mills (P.) Ltd. (2024) 463 ITR 469) / 159 taxmann.com 675 /339 CTR 513 (Jharkhand)(HC)

S. 147: Reassessment-After the expiry of four years-Reason recorded cryptic and vague-Notice and order disposing the objection is set aside. [S. 148, Art. 226] 1795

Allowing the petition the Court held that the reasons for reopening the assessment under section 147 were cryptic and that they did not furnish details, on the basis of which the assessee could defend his case. The statement of the Assessing Officer

that from the data made available, it was seen that the assessee had created a profit/ loss of Rs. 74,62,860 and that both buying and selling of trades had been executed at the Bombay Stock Exchange did not give any fact regarding the transactions or other attendant facts except saying that the assessee had engaged in the trading at the stock exchange to create profit or loss. The ground for reopening was unreasoned. Therefore, the notice issued under section 148 for the assessment year 2015-16 is set aside. The Assessing Officer is not precluded from proceeding again against the assessee by issuing a fresh reasoned notice under section 148 if the limitation period permitted. (AY. 2015-16)

Bharatkumar Nihalchand Shah v. ITO (2024)463 ITR 94 (Guj)(HC)

1796 **S. 147: Reassessment-After the expiry of four years-No evidence of failure to disclose material facts-Notice to withdraw or reduce deduction is held to be not valid-Borrowed satisfaction-Pendency of appeal-Notice for reassessment is not valid [S. 10A, 80HHE, 148, 250, Art. 226]**

Allowing the petition the Court held that appeals were pending from the assessment orders for the assessment years 2005-06, 2006-07 and 2007-08. Hence, under the third proviso to section 147 the reassessment proceedings were not valid. The court also held that the reasons for reopening rested on the satisfaction of the Assessing Officer who had passed an assessment order for the assessment year 2008-09 which would amount to substitution of the assessment orders by borrowed satisfaction of the Assessing Officer who had passed an order for the year 2008-09 which was impermissible in law. Reassessment notice and order disposing the objection is quashed. (AY. 2005-06 to 2007-08)(SJ)

Eit Services India Pvt. Ltd. v. Dy. CIT (2024)463 ITR 774 /337 CTR 3 (Karn)(HC)

1797 **S. 147: Reassessment-After the expiry of four years-Depreciation on temporary structures at hundred per Cent –No failure to disclose any material facts-Change of opinion-Reassessment notice and order disposing the objection is quashed. [S. 32, 148, Art. 226]**

Held that the Assessing Officer, in the original assessment, after considering the reply and relevant details provided by the assessee, had accepted the claim of depreciation by the assessee. For temporary structures, the prescribed rate of depreciation was hundred per cent. Once a structure was categorised as temporary, the depreciation rate provided under Appendix I appended to the Income-tax Rules, 1962, is one hundred per cent. Once it was accepted that the structures were temporary, no case could be made out that the depreciation allowance claimed was excessive. Explanation 1 and Explanation 2(c)(iv) appended to section 147 of the Act would not be applicable. The Assessing Officer had not stated in the reasons to believe that the assessee had failed to disclose truly and fully all material facts. It was a clear case of change of opinion. Thus, the notice and the order disposing of the objections of the assessee were quashed. (AY. 2012-13)

Kuehne+Nagel Pvt. Ltd. v. Add. CIT (2024)463 ITR 159 (Delhi)(HC)

S. 147: Reassessment-After the expiry of four years- Cash credits –Accommodation entry- The belief formed by the Assessing Officer suffers from lack of bona fides, is vague, far-fetched, irrelevant, based on conjecture and surmises and also arbitrary and irrational-Notice and order is quashed and set aside. [S. 144, 144B, 148, Art. 226] 1798

The Assessing Officer issued a notice under section 148 to the assessee, seeking to reopen the assessment on the grounds of an alleged bogus financial transaction with an accommodation entry provider, and subsequently made additions to the assessee's income, by issuing a demand notice u/s 147 read with 144 and 144B and penalty notice u/s 271 read with section 271(1)(c). The assessee challenged these actions through a writ petition.

Allowing the petition, the Court noted that in a similar matter involving the assessee for a subsequent assessment year, it had already set aside a notice issued under section 148. The Court observed that the reopening of assessment was based solely on the statement of an accommodation entry provider, and found that the Assessing Officer's belief lacked bona fides, was vague, speculative, arbitrary, and irrational. Thus, the Court set aside the notice under section 148, the assessment order, the demand notice, and the penalty notice in the present case as well. (AY. 2014-15)

Pasari Casting and Rolling Mills (P.) Ltd. v. ITD (2024) 298 Taxman 675 (Jharkhand)(HC)

S. 147 : Reassessment- After the expiry of four years- Order passed without disposing the objection- Order of Tribunal quashing the assessment order is held be justified. [S. 148, 260A] 1799

The Assessing Officer issued on the assessee a notice under section 148 seeking to reopen his assessment. The Assessing Officer thereafter passed assessment order without disposing of the objections given by the assessee for initiation of reassessment and made addition in his income.

The Tribunal quashed the reopening of the assessment and deleted the addition made by the Assessing Officer. On appeal the Court held that on considering the factual position rightly noted that the objections given by the assessee for initiation of reassessment were not disposed of by the Assessing Officer. The law on the subject has been rightly taken note by the Tribunal. The matter being entirely factual, no question of law much less substantial question of law arises for consideration. (AY. 2013-14)

PCIT v. Sanjay Mehta (2024) 298 Taxman 673 (Cal.)(HC)

S. 147: Reassessment-After the expiry of four years-Capital gains-Capital work-in-progress-Investment in property is accepted in assessment-Reassessment notice and order disposing the objection is quashed. [S. 45, 148, Art. 226] 1800

Allowing the petition the Court held that once the property in question had been purchased by making full and final payment and it was shown in the balance sheet in the assessment year 2015-16 no case was made out to reopen the assessment for the assessment year 2014-15. The assessment proceedings for the year 2015-16 had been completed and no adverse order with respect to the investment in question made by the assessee according to the sale deed had been passed. Since the assessment order for the assessment year 2015-16 had also undergone the process of revision and the claim of the assessee with respect to the investment made on the cost of investment in the property

had been accepted no case had been made out to reopen the assessment proceedings of the assessment year 2014-15. The reassessment notice and order disposing the objection is quashed. (AY. 2014-15)
MAX Financial Services Ltd. v. Dy. CIT (2024)462 ITR 131 (P&H)(HC)

1801 **S. 147: Reassessment-After the expiry of four years-Deemed dividend –Loans to director of associated company-No failure to disclose material facts-Reassessment notice and order disposing the objection is quashed. [S. 2(22)(e), 148, Art. 226]**
During pendency of appeal, the Assessing Officer issued a notice under section 148 for reopening the assessment in the cases of the assessee, CEPL and NH who was holding 45 per cent share in CEPL and 70 per cent share in the petitioner company for the assessment year 2013-14 on ground that the accumulated amount of reserves and surplus in the balance sheet of the assessee-company was less than loan amount given to CEPL and, thus, the loan amount advanced by the assessee to CEPL was required to be taxed as deemed dividend under section 2(22)(e). On writ allowing the petition the Court held that there was no failure on the part of the assessee to disclose truly and fully all material facts necessary for assessment with regard to deemed dividend under section 2(22)(e) and hence initiation of the reassessment proceedings beyond a period of four years are not permissible and the same cannot be sustained on that ground alone. (AY. 2013-14)
Cygnet Infotech (P.) Ltd. v. ACIT (2024) 297 Taxman 17 (Guj.)(HC)

1802 **S. 147 : Reassessment-After the expiry of four years-Form No 10 for accumulation of income was filed late but before completion of assessment-Order passed allowing the accumulation-Reassessment notice and order disposing the objection is quashed. [S. 11(2), 12A, 12148, Form No 10, R. 17, Art. 226]**
Allowing the petition, the Court held that in the light of various judgments, it is crystal clear that Form 10 under Rule 17 is required to be filed before the Assessing Officer before he completes the assessment. In a case, where Form 10 is filed late but is filed before the Assessing Officer completes the assessment, the benefit of section 11(2) shall be available to the assessee. From a reading of impugned notice, the order dated 3-3-2022 and assessment order dated 19-3-2022, it appears that the Assessing Officer has paid no heed to the ratio laid down in the judgment of the Supreme Court and various High Courts including the Co-ordinate Bench of this Court. Accordingly, it is held that the entire process of reassessment that has been initiated by the Department holds no water and is without any legal basis whatsoever. Notice and order disposing the objection is quashed. Followed *CIT v. Nagpur Hotel Owners' Association (2001) 114 Taxman 255/ 247 ITR 201 (SC)* (AY. 2013-14)
Maa Bhagwati Shiksha Samiti v. CIT (2024) 297 Taxman 358 /336 CTR 91 (All.)(HC)

1803 **S. 147: Reassessment-After the expiry of four years-Payment to sub-contract charges-No failure to disclose material facts-Reassessment notice and order disposing the objection is set aside. [S. 37(1), 143(3), 148, Art. 226]**
Allowing the petition the Court held that since material facts relating to deduction towards sub-contract charges was a part of record, it could not be stated that there was

failure of disclosure of material facts fully and truly, notice and order disposing the objection is set aside. (AY. 2009-10)
Infosys Ltd. v. ACIT (2024) 297 Taxman 101 (Karn.) (HC)

S. 147: Reassessment-After the expiry of four years-Depreciation-No failure to disclose material facts necessary for assessment-Notice and order disposing the objection is quashed. [S. 32, 148, Art. 226] 1804
Allowing the petition the Court held that the reassessment notice is issued after the expiry of four years, the only reason for initiating reassessment proceedings by notice dated March 30, 2019, was that depreciation was allowable only at 30 percent and not at 60 percent. This change of opinion could not be made a ground for reassessment. The AO, during the course of original assessment, had accepted the return and treated certain expenses as revenue as these were incurred only to facilitate the business of the assessee who was engaged in the business of advertising and marketing communications. There was no failure to disclose material facts necessary for assessment. The notice and order disposing of the objection is quashed. (AY. 2012-13)
FCB Interface Communications Pvt. Ltd. v. ACIT [2024] 461 ITR 406 (P&H)(HC)

S. 147: Reassessment-After the expiry of four years-Amortisation of preliminary expenses-Initial Public Offering-No failure to disclose material facts-Reassessment notice and order disposing the objection is quashed. [S. 35D, 143(3), 148, Art. 226] 1805
The assessee-company is engaged in business of recycling and trading aluminium scrap. Assessing Officer completed assessment under section 143(3) on 26-8-2016 by allowing certain expenses on account of raising funds and certain sum as Initial Public Offering expenditure. After five years, the department sought to reopen the assessment, claiming that those expenses violated section 35D and was not detected by Assessing Office earlier and therefore, escaped assessment. On writ, the Court held that when all facts were correctly disclosed and were on record during assessment proceedings for relevant assessment year and Assessing Officer had not consciously taxed income which was now sought to be looked into, it was a clear case of change of opinion and therefore, reassessment notice was quashed. (AY. 2014-15)
Palco Recycle Industries Ltd. v. Dy. CIT (2024) 296 Taxman 44 (Guj.)(HC)

S. 147: Reassessment-After the expiry of four years-Unsecured loan-Accommodation entries-No tangible material-Suspicion-Reassessment notice and order disposing the objections are quashed. [S. 68, 148, Art. 226] 1806
Allowing the petition the Court held that no material came forth in terms of any statement or details to pin-point a live link or a nexus of assessee with the transaction in question in reasons recorded. There was no tangible material so as to come to a conclusion or reason to believe that income chargeable to tax had escaped assessment. Since reassessment was merely based on a suspicion, the notice and order disposing the objection are quashed. (AY. 2011-12)
Bhagwati Polyfill (P.) Ltd. v. ACIT (2024) 296 Taxman 434 (Guj.)(HC)

1807 **S. 147: Reassessment-After the expiry of four years-Unexplained investments-Development agreement-Specific query in the course of assessment proceedings-Reassessment notice and order disposing the objection is quashed. [S. 69A, 148, Art. 226]**

During scrutiny assessment, Assessing Officer issued notice raising query with respect to 13 plots sold by assessee. Pursuant to said query, assessee pointed out that copies of development agreements and financial statements reflecting income for said agreements were duly offered to tax. Considering said submissions assessment order was passed. On writ against the reassessment proceedings, the Court held that since specific query in respect of the purchase and sale of properties was raised in assessment order, reopening undertaken beyond a period of four years was a change of opinion and the same is quashed. (AY. 2015-16)

Bharatkumar Dinubhai Patel v. ITO (2024) 296 Taxman 128 (Guj.)(HC)

1808 **S. 147: Reassessment-After the expiry of four years-Unexplained money –Loans and advances-Investment in Optionally Fully Convertible Debentures (OFCDs)-No failure to disclose material facts-Reassessment notice and order disposing the objection is quashed. [S. 69A, 148, Art. 226]**

Assessing Officer issued reopening notice on ground that assessee had made an investment in certain company, however, said amount did not reflect under the head loans and advances in balance sheet. He, thus, believed that said amount had escaped assessment. On writ allowing the petition the Court held that the assessee had made investment in Optionally Fully Convertible Debentures (OFCDs) and the same was shown under heading non-current investments. In reply to notices assessee had provided a complete break-up of investment made. Accordingly the notice and order disposing the objection is quashed and set aside. (AY. 2012-13)

Koa Investment Ltd. v. ITO (2024) 296 Taxman 311 (Delhi)(HC)

1809 **S. 147: Reassessment-After the expiry of four years-Deduction at source-Non-resident-Professional fees-No failure to disclose material facts-Reassessment notice and order disposing the objection is quashed. [S. 40(a)(i), 148, Art. 226]**

Assessing Officer issued reopening notice for reason that assessee made foreign remittance on account of legal and professional fees without deducting TDS from this payment, thus, same was to be disallowed under section 40(a)(i). On writ, the Court held that the assessee was asked to submit details of all 'outward remittances' during scrutiny assessment. Assessee, in response submitted various details as asked for. A chart was also provided containing a breakup of all foreign remittances made during the year, along with details of TDS deducted or if not deducted reasons for not doing so. The reasons for reopening case was based on very same records which were placed at time of original assessment. Notice and order disposing the objection. is quashed. (AY. 2013-14)

Troikaa Pharmaceuticals Ltd. v. ACIT (2024) 296 Taxman 117 / 338 CTR 220 (Guj.)(HC)

S. 147: Reassessment-After the expiry of four years-Money transferred to assessee's bank account from cash deposits in other persons bank account-Borrowed Satisfaction-Mere increase in funds from previous year-No Tangible material on record-Notice and order disposing the objection is quashed. [S. 148, Art. 226] 1810

Allowing the Writ of the assessee, the Delhi High Court held that the reopening of the assessment was based merely on suspicion and lacked tangible material or evidence against the assessee. The Assessing Officer's "reasons to believe" relied on a letter from the ITO (Nahan), an FIR, and a charge sheet mentioning the names of directors, but failed to establish any concrete link to income escaping assessment. The AO's observations regarding the nature of deposits were speculative, referencing possibilities such as share capital, share premium, bogus sales, or loans, without any corroborative evidence. The Court emphasized that the statutory requirement is a "reason to believe," not a "reason to suspect," and that a mere increase in funds, absent supporting evidence, cannot justify reopening. Consequently, the notice under section 148 was quashed. The Court also noted that the petitioner's claim regarding non-supply of the FIR and charge sheet was not material, as the information was already available to the petitioner.. (AY. 2011-12)

Saraswati Petrochem Pvt. Ltd. v. ITO (2024) 296 Taxman 260 / 470 ITR 47 (Delhi)(HC)

S. 147: Reassessmet-After the expiry of four years-Change of opinion cannot be a reason to reopen the assessment. [S. 35D, 148, Art. 226] 1811

The court held when all the facts were correctly disclosed and were on record during the assessment proceedings under section 143(3) for the relevant assessment year, and the assessing office did not consciously tax the income which was now sought to be looked into by reopening the assessment under section 147, it was the clear case of change of opinion, and hence reassessment order was to be quashed and set aside. (AY. 2014-15)

Palco Recycle Industries Ltd. v. Dy. CIT (2024) 296 Taxman 44 (Guj.)(HC)

S. 147: Reassessment-After the expiry of four years-Reopening of assessment on the basis of decision of court that approval not obtained from competent authority-not a case of income escaping assessment due to failure on the part of the assessee to disclose material facts during the course of assessment-reopening unjustified. [S. 10B, 148, Art. 226] 1812

The assessee in its return filed for the relevant assessment year claimed deduction under section 10B of the Act. The AO while finalising the assessment accepted the claim of the assessee. Subsequently after the expiry of 4 years the AO issued notice under section 148 of the Act relying on the decisions of Delhi High Court where in the court had held that the approval for the purpose of section 10 B can only be an approval granted by the board constituted by the Central Government under the provisions of Industrial (Development and Regulation) Act 1951 and therefore, the assessee is not entitled to claim the exemption under section 10B of the Act. The Hon'ble Court had quashed the notice issued under section 148 of the Act as the same was issued beyond the period of 4 years from the end of relevant assessment year and there is no failure on the part of the assessee to furnish all the relevant material facts. The court has further observed

that the responsibility of the assessee is only to place the materials before the AO and the assessee would not be responsible for the inferences made by the assessing authority based on the materials that he has placed before the concerned authority. A change in the opinion or later decision on the legal aspects cannot be a reason for reopening an assessment which has been included on the basis of the material which is made available in cases where the reopening is attempted after 4 years unless the assessee failed to disclose the relevant information.. (AY. 2006-07 to 2008-09)
Digital Mesh Softech India Pvt. Ltd. v. UOI (2024) 461 ITR 223 (Ker)(HC)
U. S. Technology International Pvt Ltd v. UOI (2024) 461 ITR 223 (Ker)(HC)

1813 **S. 147: Reassessment-After the expiry of four years-Compensation-Business expenditure-No new tangible material-Assessee had filed reply during original assessment proceedings-twin conditions-New tangible material and failure on the part of the assessee to disclose all material facts truly and fully, does not exist-Notice and order disposing the objection is quashed. [S. 37(1), 148, Art. 226]**
Allowing the petition, the Court quashed the notice under section 148, holding it was without jurisdiction since no new tangible material was available and reassessment was based on information already on record. The original assessment had specifically addressed the lump sum compensation, with the assessee providing all relevant documents, and the AO was satisfied, making no additions. As the reassessment was initiated beyond four years without any failure by the assessee to fully disclose material facts, the conditions for reopening were not met, and section 148 could not be invoked. Thus, the Court held that jurisdiction under section 148 cannot be exercised. (AY. 2012-13)
Ratnabhumi Developers Ltd. v. ACIT (2024) 296 Taxman 364 (Guj)(HC)

1814 **S. 147 : Reassessment –With in four years-Change of opinion-Specific query was raised in the original assessment proceedings-Shares at premium-Borrowed satisfaction-Reassessment notice and order disposing the objection is quashed and set aside. [S. 68, 148, Art. 226]**
Allowing the petition the Court held that once a query is raised during the assessment proceedings and the assessee has replied to it, it follows that the query raised was a subject of consideration of the AO while completing the assessment. It is not necessary that an assessment order should contain reference and/or discussion to disclose its satisfaction in respect of the query raised. The only requirement is that the AO ought to have considered, the objection now raised in the grounds for issuing notice under S. 148, during the original assessment proceedings. In the case at hand, the AO having raised a query and the assessee having replied to it, it follows that the query raised was subject of consideration of the AO while passing the assessment order dt. 21st Dec., 2011. The reopening of assessment by the notice is merely on the basis of change of opinion of the AO from that held earlier during the course of assessment proceedings and this change of opinion does not constitute justification and/or reasons to believe that income chargeable to tax has escaped assessment. Followed *Aroni Commercials Ltd. v. Dy. CIT & Anr. (2014) 267 CTR 228/ 101 DTR 244 (Bom) (HC)* (AY. 2009-10)
Godrej Projects Development (P) Ltd. v. ITO (2024) 338 CTR 193/ 159 taxmann.com 32 / 471 ITR 493 (Bom) (HC)

S. 147 : Reassessment –With in four years-Donation-CSR expenditure-Change of opinion-Reassessment notice and order disposing the objection is quashed. [S. 37(1), 80G, 147, 148, Art. 226] 1815

Assessee-company engaged in business of manufacturing lubricating oils, filed its return of income for AY 2017-18. It disallowed a portion of CSR amount as per Explanation 2 to section 37(1) and additionally, it claimed a deduction under section 80G for donations to approved trusts/institutions-Return was selected for scrutiny, and after providing necessary details, an assessment order was passed, allowing claimed deductions. Subsequently, AO issued a notice for reopening assessment, alleging income escapement. On writ allowing the petition the Court held that from records that before finalizing original assessment order, AO raised queries to which assessee responded adequately, clarifying that deductions were only claimed under section 80G, supported by donation receipts and AO had examined all these aspects while passing original assessment order. Further, documents on record also indicated that Audit Wing of Department raised certain objections to original assessment order including issue of deduction under Section 80G and AO justified original assessment order to audit party without accepting any adjustment to same. In view of above, it could be said that assessment was reopened on basis of a change of opinion and it lacked tangible information on basis of which AO allegedly formed requisite belief. Accordingly the reassessment notice and order disposing the objection is quashed. (AY. 2017-18)

Castrol India Ltd. v. Dy. CIT (2024) 299 Taxman 71 (Bom.)(HC)

S. 147 : Reassessment –With in four years-Capital gains-Transfer-Redemption of preference shares-Loss-No new material-Reassessment-Reassessment notice and order disposing the objection is quashed. [S. 2(47), 47(iv), 148, Art. 226] 1816

On a writ petition against a notice under section 148 of the Income-tax Act 1961 proposing to reopen the assessment in the case of the assessee for the assessment year 2015-16, on the ground that the provisions of section 47(iv) were not applicable to the transaction of redemption of preference shares, and the order rejecting the assessee's objections to the notice, the High Court held that on the redemption of preference shares, the shares are cancelled and the capital asset is extinguished and ceases to exist and, therefore, the provisions of section 47(iv) are not applicable to the transaction of redemption of preference shares, that no tangible material had come into existence after conclusion of the regular assessment proceedings and before recording of the reasons on the issues stated in the reasons recorded for reopening the case, that the reassessment was on the basis of material already on record and considered at the time of passing the original assessment order under section 143(3) of the Act, that the reasons as furnished to the assessee and the undated and unsigned reasons which were never furnished to the assessee as reproduced in the order rejecting the assessee's objections, were different, that capital loss could never arise on the acquisition of shares but only on the transfer or sale of shares, that the assessee had not sold the preference shares but the shares were redeemed by G Ltd. and since on redemption there was a transfer of shares due to "extinguishment of rights therein" the capital loss was claimed in the return of income, that the notice had been issued without appreciating or understanding the correct facts, and that therefore, the notice and the order rejecting the assessee's objections were invalid (AY. 2015-16)

The Great Eastern Shipping Co. Ltd v. NFAC (2024) 463 ITR 145 (Bom)(HC)

Editorial: SLP of revenue dismissed, NFAC v. The Great Eastern Shipping Co. Ltd. (2024)463 ITR 152 (SC)

1817 **S. 147 : Reassessment-Notice based on same issue –Change of opinion-Notice is not valid-Notice and order disposing the objection is quashed. [S. 14A, 148, Art. 226]**
Assessee is engaged in business of power generation. It filed its return of income which was accepted. Thereafter, Assessing Officer issued a reopening notice against assessee on ground that it had made investments from a common pool of funds and incurred common administrative and other expenditure, debiting it to Profit & Loss account thereby attracting provisions of section 14A and, thus, taxable income by virtue of incorrect claim of expenses had escaped assessment. Queries raised by Assessing Officer in course of original assessment proceedings followed by replies given by assessee clearly showed that entire material was before Assessing Officer and applying his mind to said material, Assessing Officer had passed assessment order and statement of accounts regarding details of expenses and investment relating to earning of exempt income was accepted by Assessing Officer. On writ the Court held that there was no tangible material available with Assessing Officer to justify reopening of assessment. Accordingly thee reopening of assessment was on basis of mere change of opinion, which is was impermissible in law. (AY. 2016-17)
Bajaj Energy Ltd. v. ACIT (2024) 298 Taxman 59 / 464 ITR 569 (Bom.)(HC)

1818 **S. 147 : Reassessment –With in four years-Share application money at premium-Issue was considered in the original assessment proceedings-Change of opinion-Reassessment notice and order disposing the objection is quashed. [S. 56, 68, 143(3), Art. 226]**
Assessee had received share application money at premium. The assessment was completed under section 143(3) of the act and specific issue of share premium was raised in the Course of assessment proceedings. Reopening notice was issued on ground that share premium was charged on basis of projections which were not achieved and there was no connection between actual figures and figures considered for valuation of shares. On writ allowing the petition the Court held that during original assessment proceedings, subject matter of large share premium received during year was under active consideration of Assessing Officer. Since very issue of share premium was subject matter of consideration by Assessing Officer during original assessment proceedings, reopening of assessment was merely on basis of change of opinion and thus not sustainable. (AY. 2014-15)
GRI Towers India (P.) Ltd. v. UOI (2024) 298 Taxman 382 (Bom.)(HC)

1819 **S. 147 : Reassessment –With in four years-Corporate social responsibility (CSR)-Donation-Notice and order disposing the objection is quashed. [S. 143(3), 148, Art, 226, Companies Act, 2013. S. 135]**
Assessee incurred expenses towards corporate social responsibility (CSR) A disallowance was made for amount of CSR in return of income. It had claimed deduction of Rs. 1. 79 crores (being 50 per cent of aggregate donation) under section 80G as permissible in law. Assessing Officer allowed the claim. A notice under section 148 was issued upon assessee on ground that CSR expenses claimed by assessee was not allowable as business expenditure and, hence, same was required to be disallowed. Notice providing reasons to believe itself was based on verification of profit and loss account and computation of income showing amount of CSR expenses debited under head other expenses and said amount being added back and claimed as deduction under Chapter

VA as donation. Further, in notice it was stated that during course of original assessment proceedings, neither Assessing Officer had asked for any details and information on this issue from assessee nor had assessee volunteered any details. On writ allowing the petition the Court held that Since all material/documents necessary for computing income were disclosed and submitted by assessee during course of assessment proceedings and there being absence of any fresh tangible material coming to knowledge of Assessing Officer, reopening of assessment was purely on a re-examination of very same material on basis of which original assessment order was passed. Therefore, notice and order disposing the objection is quashed. Circular No. 4/2007, dated 15-6-2007 (AY. 2016-17)

Castrol India Ltd. v. Dy. CIT (2024) 298 Taxman 524/ (2025) 474 ITR 290 (Bom.)(HC)

S. 147 : Reassessment –With in four years-Housing projects-Failure to complete the project within time limit-Change of opinion-Notice and order disposing the objection is quashed. [S. 80IB(10), 143(3), 148, Art. 226] 1820

The assessment is reopened on ground that assessee was not eligible for deduction under section 80IB(10) as it had failed to complete requirement stated in section 80IB(10) towards time limit for completion of housing project. During original assessment proceedings, deduction under section 80IB(10) was subject matter of consideration by Assessing Officer Assessing Officer raised a query regarding same and assessee had replied to it. There was also a note on deduction under section 80IB(10) where in residential buildings in question had been discussed. On writ the court held that reopening of assessment merely on basis of change of opinion of Assessing Officer from that held earlier during course of assessment proceedings would not constitute justification and/or reason to believe that income chargeable to tax had escaped assessment. (AY. 2010-11)

Mahavir Enterprises v. ITO (2024) 298 Taxman 308/ (2025) 475 ITR 654 (Bom.)(HC)

S. 147 : Reassessment –With in four years-Special category states –Excessive deduction-Expenditure on scientific research- CSR expenses-Donations-Change of opinion-Notice and order disposing the objection is quashed. [S. 35(2AB), 37(1), 80G, 143(3), 148, Art. 226] 1821

Reassessment notice was issued on ground that there were reasons to believe that assessee's income chargeable to tax had escaped assessment as regards claim of provision against unascertained liabilities, claim of excessive deduction under section 35(2AB), deduction claimed on account CSR expenses and donations and excess allowance of deduction. On writ the Court held that questionnaire along with notices under section 142(1) were issued and further details were called for from time to time during course of assessment proceedings and assessee had furnished details called for from time to time. In assessment order, Assessing Officer had also dealt with assessee's claim for deduction under section 80IC and provision for expenses under section 37(1) which were disallowed. Since four issued raised in reasons to believe were subject matter of consideration during assessment proceedings, reopening was on basis of change of opinion. Accordingly the notice and order disposing the objection is quashed. issued under section 148 was to be quashed and set aside. (AY. 2016-17)

Bajaj Auto Ltd. v. Dy. CIT (2024) 298 Taxman 79 / 464 ITR 659 (Bom.)(HC)

1822 **S. 147: Reassessment-Notice Issued on basis of information received from Deputy Director of Income-Tax (Investigation)-Non-application of mind-information received from the investigation wing-Reassessment invalid. [S. 68, 143(1), 148, Art. 226]**

The Assessing Officer issued a reassessment notice based on information received from the investigation wing, indicating that cash had been deposited in the assessee's bank account and immediately thereafter transferred via cheque into a company's account where the assessee was a director. The primary reason given by the Assessing Officer was the need to examine the details of these deposits.

The court held that the notice did not state that any income chargeable to tax had escaped assessment, nor did it show that the Assessing Officer had applied his mind to the information received. The notice appeared to be issued merely for verification or examination purposes. The court ruled that reopening notices cannot be issued solely for verification purposes and must be based on a belief that income chargeable to tax has escaped assessment. Therefore, the impugned reassessment notice was unjustified and set aside. (AY. 2007-08)

Neetu M. Chandaliya (Mrs.) v. ITO [2023] 156 taxmann.com 85 / [2024] 462 ITR 50 (Bom) (HC)

1823 **S. 147 : Reassessment –With in four years-Annual subscription fee to club-Capital or revenue-Reassessment notice and order disposing the objection is quashed. [S. 37(1), 143(1), 148, Art. 226]**

Assessee has paid annual and subscription fee to a club and claimed as revenue expenditure. The Assessing Officer issued notice under section. 148 on the ground that a reason to believe that amount was paid towards entrance and subscription fees to a club (WSC) but Schedule 9 of profit and loss account only enumerated membership and subscription and did not disclose anywhere which club it was. The assessee had given a breakup of entrance fees and subscription fees for 1 year and Schedule 9 itself disclosed that said payment was recurring in nature. On writ the Court held that the expenditure would be revenue expenditure because it had been incurred wholly and exclusively for purposes of business and would facilitate smooth and efficient running of business and did not add to profit earning apparatus of business enterprise. Reassessment notice and order disposing the objection is quashed. (AY. 2008-09)

Swiss Re Services India (P.) Ltd. v. Dy. CIT (2024) 296 Taxman 190 / 470 ITR 221 (Bom.)(HC)

1824 **S. 147 : Reassessment-With in four years-Advancing loan to sister concern from borrowed capital without interest-Loan was advanced out of commercial expediency-Reopening of assessment on the ground that interest claimed on borrowed capital is not allowable and hence, escaped assessment-Reassessment notice and order disposing the objection is quashed. [S. 36(1)(iii), 148, Art. 226]**

Hon'ble High Court has held that the assessee had advanced loan to its sister concern as a measure of commercial expediency by using borrowed funds, interest on such borrowed funds was to be allowed as deduction under section 36(1)(iii). Thus, reopening of assessment on the ground that interest claimed on borrowed capital was not allowable under section 36(1)(iii) was not justified. (AY. 2009-10)

Vaman Prestressing Co. Pvt. Ltd. v. Addl. CIT (2023) 295 Taxman 252 / (2024) 461 ITR 192 (Bom)(HC)

S. 147: Reassessment-Prior period expenditure-Disallowance made in subsequent AY 2010-11 was set aside by CIT(A)-No appeal is filed before the CIT(A)-Reassessment notice and order disposing the objection is set aside. [S. 37(1), 148, Art. 226] 1825

The return of income filed by the assessee on 29. 09. 2008 for A. Y. 2008-09 was subjected to scrutiny assessment and order was passed on 20. 12. 2010 u/s. 143(3) of the Act after seeking details related to prior period income and expenses. Subsequently, notice u/s. 148 of the Act dated 28. 03. 2013 was issued to the assessee on the ground that prior period expenses claimed in return were not allowable in view of mercantile method of accounting followed by the assessee. The assessee filed objection stating that assessment order was passed after taking into account details filed in respect of prior period income and expenses and hence, it amounted to 'change of opinion'. The objection was rejected by the AO stating that for A. Y. 2010-11, the assessment was completed u/s. 143(3) of the Act after making disallowance in respect of prior period expenses and it constituted fresh material for reopening of the assessment. The assessee challenged the notice before the High Court under writ contending that the disallowance made in A. Y. 2010-11 was deleted by the CIT(A) and on this issue, Revenue had not filed an appeal before the Tribunal. Hence, there was no tangible material before the AO, and reassessment proceedings were nothing but a change of opinion. High Court accepted the contentions of the assessee and quashed the notice issued u/s. 148 of the Act. (AY. 2008-09)

Kirloskar Ferrous Industries Ltd. v. DCIT [2024] 463 ITR 570/ 162 taxmann.com 867 (Bom) (HC)

S. 147: Reassessment-Principle of natural justice-Order passed without affording opportunity to be heard-Order is not valid-Directed to pass reasoned order after providing a reasonable opportunity of hearing. [S. 148, Art. 226] 1826

Allowing the petition the Court held that no personal hearing was granted before the order dated February 22, 2022 was passed. It was alleged by the assessee that in the order there were incorrect findings. These allegations had not been denied by the respondents. The order is not valid. Directed to pass reasoned order after providing a reasonable opportunity of hearing.

Abhijeet Anilkumar Gaikwad v. ACIT (2024)463 ITR 810 (Bom)(HC)

S. 147: Reassessment-Within four years-Cash credit-Share premium-No tangible material-Reassessment is bad in law. [S. 2(24)(xvi), 56(2)(viib), 68, 143(1), Art. 226] 1827

During the relevant assessment year, the assessee-company raised capital by issuing optionally Convertible Preference Shares with a face value of Rs. 1 at a premium of Rs. 999 to company which was its sister concern. The assessment was made under section 143(1). Assessing Officer reopened assessment on ground that based upon analysis of details and information of balance sheet, share premium charged was not justified on basis of 'intrinsic valuation' of shares and Net Asset Value Method and to that extent income had escaped assessment, Since, the Assessing Officer had not doubt regarding transaction having taken place between said two companies with regard to allotment of preference shares and receipt of share premium amount and assessment in case of company had become final, there was neither any basis for Assessing Officer for

his reason to believe that income had escaped assessment nor was there any tangible material which would have otherwise given jurisdiction to reopen assessment even when reopening was sought to be made within a period of four years. The reassessment notice is quashed. (AY. 2010-11, 2011-12)
SLS Energy (P.) Ltd. v. ITO (2024) 470 ITR 153 /(2023) 154 taxmann.com 400 (Bom) (HC)

1828 **S. 147 : Reassessment –With in four years-Gift of shares-Transfer of capital asset-Neither S. 50CA or S. 50D were applicable-No tangible material-Reassessment notice and order disposing the objection is quashed. [S. 45, 47, 48, 50CA, 50D, 148, Art. 226]**
The petitioner challenged the validity of the reassessment notice on the ground that since the shares were transferred by way of gift no consideration was received by the petitioner. Allowing the petition the court held that S. 45, 47 and S. 48 makes it clear that the AO could not have any tangible material to form a belief that income has escaped assessment. On scrutiny of the statutory provisions as the transaction in question does not invite any tax liability, one cannot accept the submission that there is some tangible material to form a belief that there is an escapement of income. Even if there is a transfer of a capital asset under a gift, which admittedly in the case herein, it shall not amount to a transfer under S. 45. The submission that assessee being a trust it can be reasonably presumed that the transfer was for a consideration because anything a trust does is for the benefit of its beneficiaries was not sustainable because it is not the case of the Revenue in the reasons to believe or in the order disposing objections or even in the affidavit-in-reply. The reassessment notice and order disposing the objection is quashed. Relied on *Prakriya Pharmacem v. ITO (2016) 66 taxmann.com 149 (Guj)(HC)* (AY. 2010-11)
Jai Trust v. UOI (2024) 339 CTR 359 / 160 taxmann.com 690 (Bom) (HC)

1829 **S. 147 : Reassessment-Financial cost-Interest-Tax deducted at source-Query was raised in the course of original assessment proceedings-Reassessment notice on same issue is not valid. [S. 148, Art. 226]**
Allowing the petition, the Court held that once a query is raised during the assessment proceedings and the assessee has replied to it, it follows that the query raised was a subject of consideration of the Assessing Officer while completing the assessment. It is not necessary that an assessment order should contain a reference to or discussion about it to disclose its satisfaction in respect of the query raised. The only requirement is that the Assessing Officer ought to have considered the objection raised in the grounds for issuing notice under section 148 of the Act during the original assessment proceedings. The court also observed that it was true that in the assessment order there was no elaborate discussion regarding the items but there had been disallowance on interest on tax deducted at source amounting to Rs. 1,22,956 debited to the profit and loss account. This was an indication that the subject matter of financial cost and other expenses had been discussed during the assessment proceedings. (AY. 2017-18)
Geopreneur Realty Pvt. Ltd. v. UOI (2024)466 ITR 640 (Bom)(HC)

S. 147: Reassessment-Effect of third proviso to Section 147-Income which was the subject matter of appeal-Notice Of Reassessment In Respect Of Such Income Not Valid. [S. 80IB(10), 148, 250, Art. 226] 1830

The court held that the escapement of income due to claim of deduction under section 80-IB(10) of the Act of Rs. 4,47,30,649 was admittedly the subject matter of appeal and therefore, on this income reassessment was not permissible. The Revenue could initiate reassessment proceedings subject to the fulfilment of the conditions mentioned in sections 147/148 of the Act, i. e., so long as it is not hit by the third proviso to section 147 of the Act. The notice for reassessment was not valid. Section 147 of the Income-tax Act, 1961, deals with situations where income has escaped assessment. The section provides for a clear bar that where an income, which is subject matter of any appeal reassessment of such income is not permissible. (AY. 2008-09)

Poonam Builders v. ACIT (2024)466 ITR 186/162 taxmann.com 238/(2025) 342 CTR 254 (Bom)(HC)

S. 147 : Reassessment - Business expenditure-Incidental benefit to third party is not relevant-Notice and order disposing the objection. is quashed. [S. 37(1), 148, Art. 226] 1831

Allowing the petition, the Court held that even if the assessee had incurred any expenditure towards advertisement, sales promotion, product display posters, etc. on the direction of the DIPL and these expenditures might have benefited Diageo as well, did not entail right to deny deduction under section 37(1) of the Act. It was unacceptable to even suggest that the expenses were not incurred for the purpose of business of the assessee. This was because in the affidavit-in-reply itself it was admitted that the assessee was engaged in the business of importing and trading in foreign made foreign liquors. Even the reasons recorded states that the assessee was engaged in import of alcoholic beverages from Diageo Brands BV and the assessee was in the business of importing and trading in foreign made foreign liquors. The reasons which had been recorded, could never have led a prudent person to form an opinion that income had escaped assessment within the meaning of section 147. The notice of reassessment was not valid. (AY. 2007-08)

Sun Tan Trading Co. Ltd. v. Dy. CIT (2024)465 ITR 540 /159 taxmann.com 217 (Bom)(HC)

S. 147 : Reassessment-Change of opinion-Charitable trust-Accumulation of income-Fund pending utilization-Examined in the course of regular assessment proceedings-Reassessment is bad in law. [S 11, 12(1), 13, 148, 260A] 1832

Dismissing the appeal of the Revenue the Court held that during the assessment proceedings, the Assessing Officer has examined the utilisation of fund hence reopening on account of change of opinion is not permissible. Order of Tribunal is affirmed. (AY. 2004-05 to 2009-10.)

CIT(E) v. Tibetan Children's Village Dal Lake (2024)470 ITR 314 (HP)(HC)

1833 **S. 147 : Reassessment-Long term capital gains-Penny stocks-Reassessment notice is valid-Sanction of specified authority-Not raised earlier-Plea is not entertained-Reasons and satisfaction note is not furnished to the assessee-Directed to dispose the objection by passing a speaking order. [S. 10(38), 45, 148, 151, Art. 226]**

On writ, the Court held that reassessment notice in respect of long term capital gains on penny stocks is held to be valid. As regards the validity of sanction of specified authority, the same was not raised earlier, hence oral plea is not entertained. As regards the reasons and satisfaction note which was not furnished to the assessee, the Assessing Officer is directed to dispose the objection by passing a speaking order. (AY. 2011-12, 2013-14)(SJ)

Girish Kumar Agarwalla v. ACIT (2024) 470 ITR 252 (Gauhati) (HC)

1834 **S. 147 :Reassessment-Faceless Assessment –Principle of natural justice-Reasons not provided-Reassessment is not valid-Respondent may proceed in accordance with law. [S. 14B, 148, Art. 226]**

Allowing the petition the Court held that the order passed by the authority in violation of principles of natural justice without providing reasons for reopening and the draft assessment order or in other words by not following the prescribed procedure laid down in the provisions of section 144B of the Act, for faceless assessment. Accordingly, the order of reassessment is not valid hence quashed. However, the respondent is given the liberty to proceed in accordance with law. (AY. 2013-14)

Himgiri Mining and Projects v. NFAC(2024) 470 ITR 91 (Guj) (HC)

1835 **S. 147: Reassessment-With in four years-Shah commission report-No tangible material-Reassessment is quashed. [S. 143(1), 148]**

Assessee-firm is engaged in export of Iron Ore. It had filed its return of income declaring loss which was processed under section 143(1). Later, assessee was served with reassessment notice on basis of Report of Justice Shah Commission on ground that invoices issued by assessee were below international price. On writ, the Court held that report relied by revenue was wholly subjective and no other fact was gone into or brought out in Report to suggest that the invoice price was deliberately suppressed or that actual consideration received was more. Since there was no material in that regard, reassessment proceedings being initiated without any tangible/ relevant material to form any reason to believe as to escapement, reassessment proceeding is quashed. (AY. 2011-12)

Mudra Exports v. Dy. CIT (2024)470 ITR 663 /161 taxmann.com 811 (All) (HC)

1836 **S. 147: Reassessment-Best judgment assessment-Order passed in the name of legal heir without granting an opportunity of person hearing-Order is not valid. [S. 144, 148, Art. 226]**

The petitioner challenged the ex parte order in the name of legal heir without granting an opportunity for hearing. On writ, the court allowed the petition and held that no show-cause notice was issued to the petitioner and no opportunity of personal hearing was offered to the petitioner before the assessment order dated May 31, 2023 hence, the order passed in the name of the petitioner as the legal heir of the deceased assessee. The assessment order is quashed and the order is set aside. (AY. 2016-17)

Sandhya Sailesh (Smt.) v. ITO (2024)470 ITR 85 (Mad) (HC)

S. 147 : Reassessment-Long term capital gain-Limited scrutiny-Change of opinion-Reassessment notice and order disposing the objection is quashed. [S. 54F, 143(3), 148, Art. 226] 1837

The assessee during limited scrutiny which focused on the computation of capital gains and deductions under section 54F, provided all required details and evidence regarding the sale and purchase of immovable property both at the time of filing the return and during the assessment proceedings. The assessment was completed under section 143(3), accepting the declared income. The assessee's objection to reassessment was rejected. However, on writ, the Court held that the reassessment constituted a mere change of opinion, and accordingly, quashed both the notice under section 148 and the order disposing of the objection. Relied on *CIT v. Kelvinator of India Ltd. [2010] 187 Taxman 312/320 ITR 561 (SC) (para 11)* followed. (AY. 2016-17)

Hareshkumar Bhupatbhai Panchani v. ITO (2024) 301 Taxman 363 (Guj)(HC)

S. 147 : Reassessment –With in four years-Purchase and sale of land- Audit objection-Business income or capital gains-No fresh, tangible information-Reassessment notice and order disposing the objection is quashed. [S. 28(i), 45, 148, Art. 226] 1838

The assessee filed his return of income for the relevant assessment year in form ITR-5 and the said ITR was subject to scrutiny in regular assessment. The income offered under the head "Capital Gain" on transfer of land has been duly scrutinized and accepted u/s 143(3) of the Act. Subsequently, the AO received certain information that the assessee had purchased agriculture land which was converted into non-agricultural land for the residential and commercial purposes and opined that this is the trading activity liable to be taxed under the head "Business Income" and accordingly, on such reasons, issued the notice u/s 148 of the Act.

On Writ, the Hon'ble Court noted that the reasons recorded by the AO were incorrect as the assessee had filed the return of income in Form ITR-5 and not in Form ITR-3 or, ITR-4, that the income offered in the ITR-5 including the income under the head "Capital Gain" was scrutinized in depth for passing the order u/s 143(3). The Court further observed that the impugned notice was issued solely on the basis of audit objection, which is not permissible in law and thus, the AO has not arrived at an independent reasoning for reopening and more so, in the absence of any fresh, tangible material for reopening of the concluded assessment after four years in the absence of any failure on the part of the assessee to disclose truly and all the materials relevant to the assessment. The notice u/s 148 was to be quashed. Referred *CIT v. P. V. S. Beedies (P.) Ltd. (1999) 103 Taxman 294/237 ITR 13 (SC)*(AY. 2016-17)

Nanubhai Vashrambhai Ramolia v. ACIT (2024) 301 Taxman 199 (Guj)(HC)

S. 147: Reassessment-Provision of certain amount towards restatement of liability in foreign currency-Reassessment is valid Finding of fact given by Tribunal cannot be disturbed in appeal before the High Court. [S. 37(1), 148, 254(1), 260A] 1839

Dismissing the appeal the Court held that the power of Hon'ble High Court under section 260A of the Act is limited to the substantial question of law. Thus, the finding rendered by the Appellate Tribunal cannot be disturbed in appeal under section 260A of the Act. Provision of certain amount towards restatement of liability in foreign currency, the reassessment is valid.

Costal Energy (P.) Ltd. v. Dy. CIT (2024) 301 Taxman 51 (Mad.) (HC)

1840 **S. 147 : Reassessment –With in four years-Bad debt –Advances written off-Change of opinion-Reassessment notice and order disposing the objection is quashed and set aside. [S. 36(1)(vii), 142(1), 143(3), Art. 226]**

The court held that the records reveal that the assessee had furnished all the materials for completing the assessment on 17-12-2019 under section 143(3). In response to the notice dated 30-11-2019 issued under section 142(1), the assessee was called upon to furnish the details of other expenses, bad debts, advance written off, etc. This information were furnished by the assessee in a detailed note on 9-12-2019. Therefore, it is clear that the reasons given for reopening the assessment are inspired from a change of opinion by the Assessing Officer. The reassessment notice and order disposing the objection is quashed and set aside. (AY. 2017-18)(SJ)

Changepond Technologies (P.) Ltd. v. ACIT (2024) 301 Taxman 613 (Mad.)(HC)

1841 **S. 147 : Reassessment –With in four years-Cash credits- Shell Companies- Information from Investigation Wing-Recorded reason mechanical manner without application of mind by the Assessing Officer-Mistake- A mistake, which can be corrected under section 292B, should be such that if excised it does not change tenor and scope of documents/proceedings referred to therein-Order of Tribunal quashing the reassessment order is affirmed- No substantial question of law. [S. 68, 143(1), 148, 260A, 292B]**

The assessment was reopened on the basis of information from the Investigation wing. The reasons placed on record by Assessing Officer referred to information received by Assessing Officer that assessee had raised a loan from K. J. S. Ahluwalia Group (KG Group) through Tanish Tradecom Pvt. Ltd and Puneet Oils and Chemicals Ltd (TTPL and POCPL) which were dubious entities. The court held that there was no reference to how Assessing Officer had, at that juncture, formed a view that they were dubious entities. The reasons did not advert to material that was available to Assessing Officer and which persuaded him to form a belief that income chargeable to tax had escaped assessment. Therefore, reasons recorded lacked necessary jurisdictional prerequisite of reason being recorded, before entering realm of reassessment proceedings. The Tribunal rightly held that Assessing Officer had proceeded in a mechanical manner as he had based his decision to reopen his assessment on information received from investigation wing and there was absence of independent application of mind by Assessing Officer. The court also held that a mistake, which can be corrected under section 292B, should be such that if excised (removed) it does not change tenor and scope of documents/ proceedings referred to therein i. e., return of income, assessment, notice, summons or other proceedings, taken, furnished or made or issued or taken or purported to have been furnished or made or issued or taken against assessee under provisions of Act. The order of Tribunal is affirmed. No substantial question of law. (AY. 2010-11)

CIT v. Spirit Global Construction (P.) Ltd (2023) 153 taxmann.com 641/ (2024) 471 ITR 470 (Delhi)(HC)

Editorial : Delay of 213 days, SLP of revenue dismissed as the delay is not satisfactorily explained, CIT v. Spirit Global Construction (P.) Ltd. (2024) 300 Taxman 102 (SC)

S. 147: Reassessment-Directions of higher authorities-Evident from record that Assessing Officer had passed order for reassessment under influence of his superiors-Reassessment is rightly quashed by the Tribunal. [S. 68, 132(9A),132A, 148 260A] 1842

The assessee was a director of a company. Search and seizure operations were carried out by CBI at the residential premises of one JKJ, who was an employee of said company. During such search operation, certain documents were found apart from Indian currency of certain amount and foreign currency. Photocopies of seized documents were handed over by CBI to Income Tax Department for enquiries and investigation. Subsequently, remaining seized documents were handed over by CBI to DIT (Inv.) which was in response to warrant of authorisation issued by DIT (Inv.) under section 132A. On basis of such documents, the Assessing Officer issued notice under section 148 to assessee. Accordingly, the reassessment order was passed making addition under section 68 of the Act. On appeal the CIT(A) upheld the order of the AO. On further appeal, the Tribunal held that reassessments were completed on the directions/ dictates of the higher authorities, which is not permissible in law. On appeal by the Revenue the High Court held that, the Assessing Officer was taking instructions on each and every hearing and dictates was clearly given to him. Even questionnaire was prepared on instruction of his superiors and same was even sent to Delhi for confirmation. In a letter addressed by Assessing Officer to DDIT(Inv.), Assessing Officer had clearly written that though he had drafted skeleton of order, but he wanted guidance of higher authorities. Therefore, it was quite evident that Assessing Officer had passed order for reassessment under the influence of his superiors. Therefore, reassessment order was not sustainable, particularly when reassessment started at dictation of higher authorities and thereafter, during reassessment process continuous instructions were imparted. Order of Tribunal is affirmed. (AY. 1988-89 to 1992-93)

Dy. CIT v. Surendra Kumar Jain (Dead) through legal heirs (2024) 340 CTR 536 / 241 DTR 385 / 164 Taxmann.com 575 (Chhattisgarh)(HC)

S. 147:Reassessment-Notice-Faceless Assessment-Notice issued by jurisdictional Assessing Officer-Contravention of statutory provisions prescribed for Faceless Assessment-Notice and consequential orders without jurisdiction and set aside. [S. 119, 120, 144B(7), 144B(8) Art. 226] 1843

The court allowed the petition and held that the notice under section 148 issued by the jurisdictional Assessing Officer and the proceedings initiated thereafter, without conducting the faceless assessment as envisaged under section 144B were contrary to the statutory provisions and without jurisdiction and hence were unjustified giving liberty to proceed following the procedure as laid down under the Act, the notice issued by the jurisdictional Assessing Officer under section 148 and the consequential orders were set aside. Followed, *Jasjit Singh v. UOI (2024) 467 ITR 52 (P& H)(HC)*

Dinesh Kumar Bansal v. UOI (2024)467 ITR 61 (P&H)(HC)

S. 147 : Reassessment –With in four years-Rejection of objections-No final determination of tax liability-Writ petition is dismissed. [S. 37(1), 148, Art. 226] 1844

Dismissing the petition, the Court held that there was no final determination of the tax liability in the order rejecting the objections of the assessee. The assessee could

raise all objections before the Assessing Officer as it stood prior to April 1, 2021. The assessment order should be passed after giving a reasonable opportunity of hearing. (AY. 2017-18)(SJ)
Express Infrastructure Pvt. Ltd. v. ITO (2024)467 ITR 137/ 162 taxmann.com 565 (Mad) (HC)

1845 **S. 147: Reassessment-Faceless Assessment-Notice-Circulars and instructions-Cannot override statutory provisions-Notice issued by Jurisdictional Assessing Officer without jurisdiction is set aside. [S. 119, 144B(7), 144B(8), 148, 151A, Art. 226]**
On writ the petitioner has challenged the notice of reassessment issued by the Assessing Officer after the new regime of faceless assessment was brought into force by the amendment. Allowing the petitions the Court held that notices issued by the jurisdictional Assessing Officer under section 148 and the consequent reassessment proceedings initiated under section 147 without conducting the faceless assessment in the procedure as envisaged under section 144B were contrary to the provisions of the Act and accordingly the notices and consequent order were set aside for want of jurisdiction. Relied on *Jatinder Singh Bhangu v. UOI (2024) 466 ITR 474 (P& H)(HC)*
E-Assessment of Income Escaping Assessments Scheme, 2022 (2022) 442 ITR (St.) 198)
Jasjit Singh v. UOI (2024)467 ITR 52/ 340 CTR 1/ 240 DTR 337 / 300 Taxman 437 (P&H) (HC)

1846 **S. 147 : Reassessment-Faceless Assessment-Notice issued by Jurisdictional Assessing Officer-Department directed to file Affidavit-in-position-Stay of notice until disposal of writ petition or further order whichever is earlier. [S. 119, 144B,148,151A, Art. 226]**
On a writ petition challenging the notice issued under section 148 of the Income-tax Act, 1961, for reopening the assessment under section 147, for the assessment year 2017-18 by the jurisdictional Assessing Officer contending that in terms of section 151A, consequent upon publication of the Notification dated March 29, 2022 ([2022] 442 ITR (St.) 198) a notice under section 148 could only be issued through automated allocation, in accordance with the risk management strategy formulated by the Central Board of Direct Taxes, in a faceless manner, to the extent provided in section 144B with reference to making assessment or reassessment. Since a jurisdictional issue had been raised, the writ petition should be heard upon exchange of affidavits within the time prescribed. Hence, the notice issued by the jurisdictional Assessing Officer under section 148 for reopening the assessment under section 147 for the assessment year 2017-18 was stayed till the disposal of the writ petition or until further order whichever was earlier. (AY. 2017-18)(SJ)
Nava Diganta Builders v. UOI (2024)467 ITR 454 / 166 taxmann.com 414 (Cal)(HC)

1847 **S. 147 : Reassessment-Assessment order-Notice of demand issued towards differential amount of tax payable inclusive of interest-Demand notice contrary to Assessment order and therefore, unsustainable and quashed [S. 144B, 148, 156, Art. 226]**
The court allowed the petition and held that the demand notice issued under section 156 was contrary to the assessment order under section 144B read with section 147 and hence not sustainable. The Faceless Assessment Unit, after taking into consideration

all aspects, including the explanation given by the assessee had concluded that no adverse inference could be drawn and had accordingly accepted the income declared in the return at rupees zero. No demand on the basis thereof could have been raised. Therefore, the notice under section 156 had been issued mechanically without considering the assessment order. The purported computation sheet appended to the demand notice was also contrary to the assessment order. The notice of demand issued under section 156 is quashed. (AY. 2015-16)
Nazirpur Large Sized Multipurpose Co-Op. Society Ltd. v. UOI (2024)467 ITR 6/300 Taxman 164 (Cal)(HC)

S. 147 : Reassessment –Within four years- No new tangible material-Review of the assessment to rectify earlier error or omission-Notice and order disposing the objection is quashed. [S. 148, 263, Art. 226] 1848
Allowing the petition the Court held that there was no new tangible material. Court also held that review of the assessment to rectify earlier error or omission is not valid. Accordingly, the notice and order disposing the objection is quashed. (AY. 2016-17)
Kalinga Institute of Industrial Technology (KIT) v. ACIT(E) (2024) 337 CTR 108 (Orissa) (HC)

S. 147: Reassessment- Non-Resident- Permanent Establishment-Transactions found to be at arm's length-Supplying materials through direct imports to Indian Railways-Allegation of wholly owned subsidiary- No material to prove conclusively that Indian Subsidiary's place assessee's Permanent Establishment falling in any of three Categories - Liberty is given to Department to independently examine whether Delhi Office of assessee a Permanent Establishment or service Permanent Establishment-Petition is allowed - DTAA-India-USA. [S. 92CA, 133A, 148, Art. 5(1), 5(2), 5(3), 5(4)] 1849
The Court allowed the petitions and held that the reassessment proceedings under section 147 were invalid, as the Deputy Commissioner (IT) had categorized the assessee under all three types of permanent establishments i. e., service PE, fixed place PE, and dependent agent PE, without substantiating any of the necessary conditions. The Court found no evidence that the foreign enterprise rendered services in India through employees of its subsidiary or other personnel, nor was there material to show that the Indian subsidiary was authorized to, or actually did, conclude contracts for the assessee, ruling out a dependent agent PE. The mere discovery of the assessee's seal during a survey was deemed irrelevant. The onus was on the Revenue to establish the existence of a PE, and statements recorded during the survey did not demonstrate this. The Indian subsidiary's activities were limited to communication and consultancy support, which were preparatory or auxiliary in nature, and thus did not create a PE under the India-US DTAA. The Court concluded that the Revenue failed to establish any fixed place, service, or dependent agent PE, and that the finding of a PE was unsustainable in law. (AY. 2012-13 to 2018-19)
Progress Rail Locomotive Inc. v. Dy. CIT (IT) (2024)466 ITR 76 / 339 CTR 129/163 taxmann.com 52(Delhi)(HC)

1850 **S. 147 : Reassessment-Reassessment should be based on reasons given in notice-Reasons not found valid-No addition was made on the basis of recorded reasons-Additional grounds cannot validate reassessment-Alternate remedy is not an absolute bar on issue of writ. [S. 45, 148, Art. 226]**

The Court allowed the petition and held that the assessee had approached the High Court upon notice being issued under section 148 of the Act. Such notice was challenged on multiple grounds and the court had granted an interim stay at the time of admission. In spite of the order of stay, the respondents proceeded to issue the assessment order on the following day. In the overall facts and circumstances, this was an appropriate case to exercise jurisdiction under article 226. The court also held that the reason cited for reopening the assessment for the assessment year 2013-14 was the deletion of Rs. 86,93,77,010 under the head "land" without offering capital gains for assessment. The assessment order clearly disclosed that no additions were being made on this account since there were no capital gains. The assessee had approached the court soon and thereafter the court had granted interim stay on further proceedings on March 30, 2022. The assessment order dated March 31, 2022 came to be issued in these facts and circumstances with additions in an aggregate sum of Rs. 1,49,93,830 under various heads. Significantly, no addition was made regarding the transaction that triggered the reopening of assessment. Hence, the notice under section 148 and the assessment order issued on March 31, 2022 were not valid. (AY. 2013-14)

Anand Cine Services Pvt. Ltd. v. ACIT (2024)465 ITR 245 (Mad)(HC)

1851 **S. 147: Reassessment- Order is passed after giving a reasonable opportunity of hearing-No evidence that violation of principle of natural justice had caused prejudice to assessee- Writ is not maintainable. [S. 148, Art. 226]**

Dismissing the petition, the Court held that the assessee was provided a reasonable opportunity to place on record evidence of execution of civil work (mass excavation and sand-filling), such as contracts for hiring excavation and other equipment, running accounts and final bills, proof of payment by the employer, contracts with sub-contractors, running accounts and final bills of sub-contractors, proof of payment to sub-contractors. Apart from producing work orders, photographs and the offer letter of employment of M, the assessee did not place any other evidence on record leading to the inference in the order that no proof of carrying out work was submitted by the assessee. In these facts and circumstances, there was no justification for exercising discretionary jurisdiction. The assessment order could not be quashed. The court also held that a denial of the request for cross-examination does not automatically warrant interference under article 226 of the Constitution. Undoubtedly, in cases where the assessee is able to provide some indication of real prejudice, by not being provided opportunity to cross-examine, interference would be justified while exercising discretionary jurisdiction, but not otherwise. (AY. 2016-17)

Swapna Manuel v. ACIT (2024)465 ITR 769 (Mad)(HC)

S. 147 : Reassessment - Cash credits – Addition was deleted by CIT(A)- No incriminating material was found- Reassessment Notice is quashed. [S. 68, 132,148, 153A] 1852

The Assessing Officer passed an assessment order under section 153A, read with section 143(3), and additions were made to income of assessee. Commissioner (Appeals) deleted additions so made on ground that since no incriminating material was found and assessments for assessment years in issue stood completed, Assessing Officer had no jurisdiction to frame an assessment order. While the appeal against Commissioner (Appeals) order were pending before Tribunal, Assessing Officer issued a notice under section 148 proposing to reassess said additions. Commissioner (Appeals) confirmed additions made in assessment years in issue under section 68. On appeal, the Tribunal quashed reassessment proceedings. On appeal by the Revenue the Court held that while appeals were pending adjudication with Tribunal, Assessing Officer could not have triggered reassessment proceedings against additions which were subject matter of appeal. The order of Tribunal is affirmed. (AY. 2010-11, 2011-12)

PCIT v. Gautam Bhalla (2024) 297 Taxman 94 (Delhi)(HC)

S. 147: Reassessment- Cash credits- Cash deposited-Demonetisation- Personal hearing was granted- Replies considered-Writ petition is dismissed. [S. 68, 142(1) 143(3), 148, Art. 226] 1853

The Assessing Officer on basis of information reflected in Insight Portal noted that assessee had made huge cash deposit in his bank account during demonetisation period. He issued a reopening notice upon assessee and passed reassessment order and added amount of cash deposit to income of assessee under section 68. He also initiated penalty proceedings under section 271AAC of the Act. The Assessee had filed an writ petition alleging that his reply to notice issued under section 142(1) was not considered and also contended that he was not given a personal hearing. Dismissing the petition the Court held that the assessment order disclosed that all replies given by assessee were considered. He was also provided VC link and password for personal hearing. Writ petition is dismissed, leaving it open to assessee to take recourse to any other remedy available to him under law. (AY. 2017-18) (SJ)

Oroth Scaria Bobby v. UOI (2024) 297 Taxman 296 /468 ITR 268 (Ker.)(HC)

S. 147 : Reassessment-Interest paid and received –Capital receipt-Change of opinion-Reassessment is bad in law. [S. 4, 36(1)(iii), 148, 260A] 1854

Dismissing the appeal of the Revenue the Court held that since there was full disclosure of interest by the assessee and the Assessing Officer while passing the original assessment order, after discussion, had formed opinion that the interest paid and interest received are not revenue items but capital item, therefore, the subsequent attempt of the Assessing Officer to tax the interest receipt as revenue receipt is clearly based on change of opinion. Therefore the Tribunal has not committed any manifest error of law to set aside the re-assessment proceedings. Thus, once the Assessing Officer has consciously applied his mind for not treating the interest paid and the interest received as revenue item and instead he treated it as capital item, subsequent proceedings under section 147 was based on change of opinion. (AY. 1997-98)

CIT v. Kesoram Industries Ltd. (2024) 299 Taxman 542 (Cal.)(HC)

1855 **S. 147: Reassessment- With in four years – Reasons recorded are cryptic and vague-Notice and order disposing the objection is quashed and set aside. [S. 148, Art. 226]**

The High Court held that when the concluded assessment is to be revisited with by the Assessing Officer, recording of reasons for exercise of such powers has to be viewed as vested rights for the assessee. While exercising powers under the Act to reopen the assessment, the Assessing Officer would harbour reasons to believe that on a particular set of facts, the income had escaped assessment and tax was not paid in relation to the year under consideration. All the reasons which hold good in the eye of and with the Assessing Officer must be made known to the assessee. The assessee has the right to refute the reasons for reassessment by filing objections. Unless the Assessing Officer appropriately delineates and communicates the reasons for reassessment, right of the assessee to file objections would remain an eyewash.

The Court after analysing various Supreme Court decisions, enlisted following legal principles

i) "Reasons" are of paramount importance. "Reasons" are heartbeat of every conclusion. It introduces clarity in any order. Without the reasons, the order is lifeless.

ii) The concept of reasoned judgment has become an indispensable part of basic rule of law and, in fact, is a mandatory requirement of procedural law.

iii) It is only clarity of thoughts that leads to proper reasoning, which becomes a foundation of a just and fair decision.

iv) Insistence for recording of reasons is intended to subserve the wider principle that justice must not only be done but it must also be seen to have been done. The reasons are requirement for ensuring judicial accountability.

v) Reasons reflect candidness on the part of the decision maker. The decision-making process becomes transparent by virtue of reasons. In absence, it is impossible to know whether the person deciding the issue is faithful to the doctrine of precedent or to the principles of incrementalism.

vi) Reasons in support of decisions must be cogent, clear and succinct. A pretence of reasons or "rubber-stamp reasons" cannot be equated with a valid decision-making process.

vii) Reasons also facilitate the process of judicial review by superior courts.

In the facts of the case, the Court held that the cryptic way of recording the reasons, as found in the instant case, would render the exercise of powers vitiated. With such vague reasons the Assessing Officer could be said to have failed to demonstrate that there was any escapement of income chargeable to tax. Thus, notice and order disposing the objection is quashed. (AY. 2015-16)

Bharatkumar Nihalchand Shah v. ITO [2024] 463 ITR 94 (Guj)(HC)

1856 **S. 147 : Reassessment –With in four years-Accommodation entries-Sale of shares-All material with respect to transaction at time of original assessment-Assessing Officer was satisfied with the explanation-Change of opinion-Reassessment notice and order disposing the objection is quashed. [S. 68, 132, 148, Art. 226]**

The assessee-company sold shares of two companies to a company namely SCPL for consideration of Rs. 40 lakhs. The assessment was completed under section 143(3)

without making any addition in respect transaction of sale of shares. After four years, Assessing Officer issued reopening notice against assessee on ground that assessee was beneficiary of accommodation entries to tune of Rs. 40 lakhs, which was sum received from SCPL. On writ, the Court held that Assessing Officer already had information with respect to certain shares which were sold for consideration to SCPL. If Assessing Officer was not satisfied with the explanation furnished by assessee, at that stage, he could have exercised powers to make addition but did not choose to do anything on such count. Accordingly, the action of reopening was merely change of opinion on same set of facts, which was disclosed and considered by Assessing Officer during assessment. Reassessment notice and order disposing the objection is quashed. (AY. 2012-13)
AIM Fincon (P) Ltd v. ACIT(2024) 166 taxmann.com 680 (Guj)(HC).
Editorial : SLP of revenue dismissed for failure to explain the delay of 489 days in filing of SLP, ACIT v. AIM Fincon (P.) Ltd. (2024) 301 Taxman 169 (SC)

S. 147 : Reassessment-Client Code Modification (CCM) as a tool for tax evasion-Information from Investigation Directorate-Minor discrepancies in language employed by revenue and as it stood reflected in reasons provided to assessee and that which existed on record would clearly not justify for interference with impugned reopening notice-Writ petition is dismissed. [S. 148, Art. 226] 1857
The assessee had used Client Code Modification (CCM) as a tool for tax evasion and only the settled trades have been considered to arrive at beneficiaries. As per said information, Assessing Officer issued a reopening notice upon assessee on ground that assessee had shifted out profit of certain amount and losses of certain amount resulting in a net reduction in income of certain amount through CCM. On writ, the assessee contended that there was distinction in the recording of reasons for initiating proceedings under section 148 as appearing upon a reading of a copy which was supplied to assessee and pro forma for recording reasons to initiate proceedings under section 148 which existed on record of revenue. The court held that recording of facts and reasons in pro forma would clearly indicate that information was identically transcribed on record of revenue as well. An annexure which was a copy of reasons supplied to assessee clearly tallied with an annexure which appeared on record except for pro forma additionally referring to information being basis for Assessing Officer having reason to believe that income of assessee had escaped assessment. Minor discrepancies in language employed by revenue and as it stood reflected in reasons provided to assessee and that which existed on record would clearly not justify for interference reopening notice. The writ petition is dismissed. (AY. 2009-10 to 2012-13)
Seema Gupta v. ACIT (2024) 298 Taxman 372 (Delhi)(HC)

S. 147 : Reassessment –With in four years- Vivad se Vishwas Scheme, 2020- Reasons for reopening of assessment-Failure to provide recorded reasons-Reassessment is not valid-Assessment order is quashed by leaving it open to revenue to initiate de novo proceedings in accordance with law. [S. 148, Art. 226] 1858
Assessee filed her original income tax return for Assessment year. Subsequently, assessee opted for Vivad se Vishwas Scheme, 2020, resulting in a full and final settlement. Despite said settlement under Vivad se Vishwas Scheme, 2020, assessee received a

notice under section 148 for reopening assessment. The assessee requested for reasons for reopening assessment by e-mail. AO reopened assessment without providing reasons. On writ the Court held that since on examining impugned assessment order, it was evident that e-mail address from which assessee requested for reasons for reopening the assessment was same as registered e-mail ID of assessee, in those circumstances, failure to provide reasons for reopening assessment was fatal. Therefore, the assessment order was quashed by leaving it open to revenue to initiate de novo proceedings in accordance with law. (AY. 2017-18)(SJ)
S. Jeyammala v. PCIT (2024) 298 Taxman 787 (Mad.)(HC)

1859 **S. 147 : Reassessment-Notice is sent to old address-Intimation is sent to new address-Objection was raised before the Assessing officer-Notice is improperly served-Section 292BB is not applicable-Failure to issue notice under section 143(2)-Reassessment is bad in law. [S. 142(1), 143(2), 148, 292BB]**
Dismissing the appeal of the Revenue the Court held that the reason, perhaps, was that the Assessing Officer was already aware of the address change. The Tribunal had also recorded a finding of fact that the new address was available in the record of the Assessing Officer. The Assessing Officer had in his record the screenshot of the material available with the Ministry of Corporate Affairs, indicating a change of address. A perusal of the reply dated March 16, 2016, disclosed that the assessee had objected to the notice under section 148 of the Act being directed to the old address before the completion of the reassessment proceedings, and hence, the provision of section 292BB was not applicable. Therefore, the notice under section 148 of the Act was improperly served. The Court also held that the Assessing Officer ought to have issued a notice under section 143(2) of the Act. The submission advanced on behalf of the Department that, while it could consider the invalid return while framing the assessment order, it was not obliged to issue a notice under section 143(2) of the Act because it was not filed within the time frame given in section 148 notice was untenable in law, since the return of income, which was belated, was considered by the Assessing Officer while carrying out the assessment. The absence of notice, under section 143(2), gave the proceedings a jurisdictional defect and, hence, rendered it invalid in the eyes of the law. The notice under section 143(2) of the Act should have been issued before framing of the assessment order under section 147 / 144 of the Act. (AY. 2010-11)
PCIT v. Dart Infrabuild Pvt. Ltd. (2024)460 ITR 532 (Delhi)(HC)

1860 **S. 147: Reassessment-Investment-No evidence that investment is bogus-Order of Tribunal quashing the reassessment is affirmed. [S. 68, 148]**
Dismissing the appeal, the Court held that the Tribunal had found that the proper course for the Assessing Officer was to investigate the creditworthiness of the creditor and to ascertain whether the transaction was genuine. However, the Assessing Officer had chosen a reverse mode by calling upon the assessee to show that the investor was creditworthy. The investor was none other than the son of the director. Therefore, the Assessing Officer had all the material before him and the power to cause proper investigation. Moreover, the factual matrix recorded by the Tribunal that the remittances were through the bank and as against a net income of USD 3 million, the remittances were only to the extent of USD

1 million. There was no reason to believe that the income of the assessee had escaped assessment. The notice of reassessment and the addition to income under section 68 were not valid. The order of Tribunal is affirmed. (AY. 2008-09)
PCIT v. Jaico Realtors Pvt. Ltd [2023] 151 taxmann.com 159 / (2024)460 ITR 516 (Karn) (HC)

S. 147: Reassessment –Within four years- Undisclosed investment-Not recording of independent satisfaction-Reassessment notice and order disposing the objection is quashed [S. 69B, 148, Art. 226] 1861
When the detailed reasons, such as the nature of the transaction, date of transactions, and name of the party with whom the transaction was entered into, were not provided, the reopening of an assessment was not justified. Unless the AO records his independent satisfaction in the reasons recorded based on information received and communicates the same to the assessee, the right of the assessee to file objections would remain an empty formality. (AY. 2017-18)
Paresh Babubhai Bahalani v. ITO (2024) 296 Taxman 324 /463 ITR 103 (Guj)(HC)

S. 147 : Reassessment-Audit objection-Corporate Social responsibility-Reopening of assessment on perusal of the records available during the course of assessment proceedings-Amounts to change of opinion-Reassessment notice and order disposing the objection is quashed. [S. 37(1), 148, Art. 226] 1862
Allowing the petition the Court held that the AO after satisfying himself with the correctness of the claim made in the return has passed the assessment order without any addition or disallowance and on the basis of the same records, issuance of notice under section 148 of the Act tantamount to be on the basis of the change of opinion which is impermissible in the eyes of law. (AY. 2017-18)
Adani Power Rajasthan Ltd. v. Asst. CIT (2023) 150 taxmann.com 136 / (2024) 461 ITR 210 (Guj)(HC)

S. 147: Reassessment-After the expiry of four years-No failure to disclose material facts-Re assessment is bad in law. [S. 45(2), 148] 1863
Held that when there is no failure to disclose material facts, then in such case reassessment is bad in law. (AY. 2008-09, 2009-10)
Dy. CIT v. Man Prakash Talkies (P) Ltd (2024) 232 TTJ 673 / 38 NYPTTJ 1272 (Jaipur)(Trib)

S. 147: Reassessment-After the expiry of four years-No failure to disclose material facts-Reassessment order is quashed. [S. 143(3)] 1864
The court held that there is not a single averment about the failure on the part of the assessee to disclose all the material facts at the time of original assessment proceedings. There is no infirmity in the detailed findings of the CIT(A) in quashing the reassessment proceedings on the ground of change of opinion as well as on the ground of limitation as per the first proviso to s. 147 in absence of any failure at the end of assessee and accordingly the reopening in the case was not in accordance with law (AY. 2008-09, 2009-10)
Dy. CIT v. Man Prakash Talkies (P) Ltd. (2024) 232 TTJ 673 / 38 NYPTTJ 1272 (Jaipur) (Trib)

1865 **S. 147: Reassessment-After the expiry of four years-Audit objection - reassessment is valid. [S. 148]**
The court held that reasons recorded for reopening of assessment clearly establish that there was failure of the assessee to disclose fully and truly all material facts necessary for assessment; although the assessment is reopened on the basis of audit objection is held to be valid. (AY. 2008-09 2010-11 to 2013-14)
ITO v. K. Murugan (2024) 227 TTJ 121 / 233 DTR 72 (Chennai)(Trib)

1866 **S. 147: Reassessment-After the expiry of four years-Bogus purchases-Change of opinion-No failure to disclose material facts-Reassessment is quashed. [S. 69A, 69C, 148]**
The court held that when there is no failure to disclose material facts and no defects in the books of account maintained by the assessee, in such case addition on account of bogus purchase is unjustified. Reassessment is quashed. (AY. 2011-12)
Dy. CIT v. Aggarwal Construction Co. (2024)116 ITR 432 (Trib) (Amritsar)(Trib)

1867 **S. 147: Reassessment- After the expiry of four years- Bogus purchases- Information from investigation wing- Incorrect reasons recorded and incorrect figures-Reassessment is quashed. [S. 143(3), 148]**
Allowing the appeal, the Tribunal held that during the original assessment proceedings, the assessee had duly furnished copies of invoices and bank account statements. The reasons recorded for reopening the assessment were based on incorrect grounds and erroneous figures relating to the alleged bogus purchases. Accordingly, the reassessment was quashed. (AY. 2012-13)
Aggarwal Construction Co. v. Dy. CIT (2024)116 ITR 70 (SN)(Amritsar) (Trib)

1868 **S. 147: Reassessment-After the expiry of four years-Excess Indexed cost of acquisition-No failure to disclose material facts-Reassessment is quashed. [S. 45, 143(3), 148]**
The court held that the assessee had made disclosure of all necessary facts for completion of assessment, there cannot be an allegation of failure to disclose material facts. Reassessment is quashed and set aside. (AY. 2014-15)
Ashok Kumar Kolla v. Dy. CIT (2024)116 ITR 73 (SN)(Hyd)(Trib)

1869 **S. 147: Reassessment-After the expiry of four years-Investments-No failure to disclose material facts-Onus on revenue-Reassessment notice and order is quashed. [S. 143(3). 148]**
The court held that the Assessing Officer has not alleged that the assessee had failed to fully and truly discloser of all material facts. It is for the Revenue to establish that there is a failure to disclose material facts. Accordingly, the reassessment is quashed. (AY. 2013-14)
Anchita Properties P. Ltd. v. ITO (2024)115 ITR 401 (Kol)(Trib)

1870 **S. 147: Reassessment-After the expiry of four years-Information from investigation wing –Accommodation entry-Reassessment is invalid. [S. 133(6), 148]**
The court held that the Assessing Officer cannot reopen the assessment merely on the basis of information from the investigation wing without correlating it with the facts

of the case. There was no allegation that the assessee's escaped assessment is due to non-disclosure of the facts necessary for the assessment and since the assessment had been reopened four years after the end of the relevant assessment year. Reassessment is quashed. (AY. 2012-13)
Shankar Logistics P. Ltd. v. Dy. CIT (2024) 115 ITR 10 (SN)(Kol)(Trib)

S. 147: Reassessment-After the expiry of four years-No failure to disclose all material facts-Reassessment is bad in law. [S. 148] 1871
The court held that the Assessing Officer had verified the balance-sheet and the profit declared in the profit and loss account, which constituted the subject matter of the original assessment proceedings. There was no failure of the assessee to disclose fully and truly the material facts relating to the assessment of its income, which had escaped assessment. There was no mention by the Assessing Officer in his reasons recorded for failure of the assessee to disclose all material facts for framing the assessment. The assessee's case was, hence, fully covered by the proviso to section 147. The order of the Commissioner (Appeals) is upheld. (AY. 2008-09 to 2010-11)
ACIT v. Balaji Hotels and Enterprises Ltd. (2024)114 ITR 213 /229 TTJ 567/239 DTR 189 (Chennai)(Trib)

S. 147: Reassessment-After the expiry of four years-Additional ground-No failure to disclose material facts-Deemed dividend-Current transactions-Accumulated profits-Closing credit balance to be verified-Reassessment is bad in law. [S. 2(22)(e), ITAT R. 27] 1872
The court held that there is no requirement to declare any deemed dividend under section 2(22)(e) of the Act in the return or in the tax audit report for this year. These requirements were introduced in the Income-tax return form and in the tax audit report much later. Under the circumstances, the assessee could not be charged with any failure to disclose fully or truly all material facts. Reassessment is quashed. (AY. 2010-11)
Dy. CIT v. Jayantibhai S. Patel (2024)113 ITR 68 (SN) (Ahd) (Trib)

S. 147: Reassessment-After the expiry of four years-Cash credits-Cash deposited in to bank-AIR information-Non application of mind by the Assessing Officer-Reasons recorded by Assessing Officer for reopening assessment were based on factual errors, reopening notice was void ab initio - Reassessment order is quashed. [S. 68, 143(3), 148] 1873
The Assessing Officer received AIR information that assessee had deposited substantial amount of cash in its bank accounts. Assessing Officer issued reopening notice to assessee and made addition under section 68 of the Act. CIT(A) affirmed the addition. On appeal the Tribunal held that the assessee had submitted copies of bank statements during course of assessment proceedings. It was also noted that AIR information relied upon for reopening case of assessee was incorrect in view of fact that assessee had deposited cash amounting to Rs. 14 lakhs instead of Rs. 17 lakhs in one of bank account as alleged by Assessing Officer. Since Assessing Officer failed to verify amount of cash deposited in bank from copies of bank statements duly furnished by assessee during course of assessment proceedings and had merely relied upon AIR information, there

was no application of mind by Assessing Officer. Since reasons recorded by Assessing Officer for reopening assessment were based on factual errors, reopening notice was void ab initio. (AY. 2011-12
Sukhvir Singh. v. ITO (2024) 208 ITD 97 (Amritsar) (Trib.)

1874 **S. 147: Reassessment-After the expiry of four years-Cash credits-Accommodation entries-Objection is not disposed-Information from ADGIT Investigation (OSD)-The addition made without enquiry and without application of mind-Reassessment is quashed. [S. 143(1) 148]**
The A. O. received information from ADGIT Investigation Unitthat the assessee is beneficiary of accommodation entries provided by Brahma Trade Links Pvt. Ltd. of Rs. 35 lakhs. The assessee filed objections challenging the reopening but without disposing the objections, assessment order was passed by adding Rs. 35 lakhs as undisclosed income. The CIT(A) confirmed the addition. Before the Tribunal, it was argued that the A. O. did not carry out any investigation and addition is based on surmises. It was also pointed out that in reality the assessee had received Rs. 20 lakhs only from Brahma Tradelinks P. Ltd. and that this issue also formed basis of reopening assessment for A. Y. 2012-13 but on being satisfied about genuineness of transaction, no income was added to the income of the assessee. Thus, there was no credible information available with the A. O. and notice issued deserved to be quashed. Accepting the contentions of the assessee, the Tribunal held that The AO failed to provide any details of the alleged receipt of Rs. 35 Lakh from the said party at any point of time and there was no credible information before the A. O. keeping in view that for A. Y. 2012-13 such receipt was considered as genuine. Therefore, the Tribunal quashed notice issued u/s. 148 and entire proceedings. (AY. 2013-14)
R. S. Darshan Singh Motor Car Finance P. Ltd. v. ITO (2024) 112 ITR 158 (Kol)(Trib.)

1875 **S. 147 : Reassessment- After the expiry of four years- Book profit-Minimum alternate tax-Tax liability under MAT provisions remains higher and unchanged despite adjustments made under normal tax provisions- Reassessment is bad in law. [S. 115JB, 148]**
In original assessment, assessee's tax liability under section 115JB (Book profits) was higher than tax liability under normal provisions. Assessee's case was reopened to adjust book profits and assess escaped income under normal provisions. The order of reassessment was upheld by the CIT(A). On cross appeal before the Tribunal the appellant contended that escapement alleged qua book profits did not meet conditions embodied in first proviso to section 147 having regard to full and true disclosure of relevant / material facts attributable to provisions for repairs in return of income by making disallowances under normal provisions and suitable declarations in audited financial statement. It was held that when adjustment on account of such provision for repairs had been made by assessee, it could not be said that while determining income as per normal provisions of Act, there was a failure on part of assessee to disclose facts in not making such corresponding adjustments while determining book profit. Accordingly, the condition of 1st proviso to section 147 was thus clearly not satisfied in instant case and hence, escapement qua book profits were not sustainable in law. (AY. 2010-11)
Genus Power Infrastructure Ltd. v. ACIT (2024) 207 ITD 26 (Delhi) (Trib.)

S. 147: Reassessment-After the expiry of four years-Information received from AIR- Cash deposited in bank-Considered in the original assessment proceedings-Reassessment is not justified. [S. 68] 1876

The assessee filed his return of income which was accepted and an assessment order was passed under section 143(3). On the basis of information received from AIR, the Assessing Officer issued a reopening notice under section 148 after four years from end of relevant assessment year in respect of cash deposits made and the addition was made. On appeal the Tribunal held that the assessee had disclosed said cash deposits in his bank account in balance sheet and profit and loss account filed with return of income for relevant assessment year and same was duly considered by Assessing Officer while passing the assessment order under section 143(3). Since, there was no failure on part of assessee to disclose material facts truly and fully, impugned reopening notice issued beyond period of four years was illegal and set aside. (AY. 2008-09)

Pardeep Kapoor. v. ITO (2024) 207 ITD 187 (Amritsar) (Trib.)

S. 147 : Reassessment- After the expiry of four years- Bogus purchases and sales-Accommodation entries- Information from DDI (Inv)- Cross examination- Denied giving accommodation entries-Reassessment order is quashed. [S. 69C, 148] 1877

The assessment was reopened on the basis of information received from DDIT (Inv) on the basis of enquiry on Giriraj Enterprises, the proprietor Mr. Harish K. Chandak alleged has given accommodation entries. On appeal the Tribunal held that the assessee has submitted ledger copy of Giriraj Enterprises, Bank statements, conformation etc. In the statement on oath Mr. Harish Chandak has denied having given hawala bills to the appellant. Tribunal held that the reopening is done only on the basis of information from DDIT(Inv) hence, the reopening is bad in law. Accordingly the addition is deleted. (ITA No. 1687 /Mum/ 2024 dt 1-8-2-24)(AY. 2009-10)

Allied Engineers and Elastomers v. ITO (Mum)(Trib). www.itatonline.org.

S. 147: Reassessment-After the expiry of four years-No failure to disclose material facts-Reassessment is bad in law. [S. 148 149(1)(b)] 1878

Once the initiation of reassessment proceedings had been challenged, all the grounds incidental thereto were available to assessee to challenge the validity of reassessment proceedings, hence, reassessment proceedings initiated by the Assessing Officer were not in conformity with the provisions of the first proviso to Section 147 of the Act. It was for Assessing Officer to record reasons clearly and unambiguously and no inference can be drawn therefrom. The court held that the requirement of the provisions of first proviso to Section 147 as well as Section 149(1)(b) of the Act were not fulfilled. Therefore, the reassessment proceedings under Section 147 were set aside as bad in law. Relied on Hindustan Lever Ltd. (2024) 268 ITR 332 (Bom.)(AY. 2005-06)

Dy. CIT v. Satya Securities Ltd. [2024] 109 ITR 700 (Mum) (Trib)

S. 147: Reassessment-Survey-Facilitating dubious transactions by accepting huge cash deposits from suspicious/unidentified entities -Transferred most of these amounts to various other suspicious entities- Reassessment notice is valid. [S. 133A, 148] 1879

The court held that during the survey proceedings under S. 133A it was observed that the assessee-society was facilitating dubious transactions by accepting huge cash

deposits from suspicious/unidentified entities and thereafter transferred most of these amounts to various other suspicious entities, said information constituted new and tangible material for initiating reassessment proceedings in the case of the assessee. Re assessment is affirmed. (AY. 2014-15 to 2016-17)
Mangaldeep Multistate Urban Co-Operative Credit Society Ltd. v. ACIT (2024) 231 TTJ 588 / 241 DTR 105 / 38 NYPTTJ 607 (Mum) (Trib)

1880 **S. 147: Reassessment-Return pending to be processed-Time limit for completing scrutiny u/s 143(3) is not expired-Reassessment cannot be initiated. [S. 139(1), 143(3), 148]**
The court held that no reassessment proceedings can be initiated when the original return filed u/s 139(1) is pending and the time limit for completing scrutiny u/s 143(3) is not expired. (AY. 2018-19)(ITA No. 61/Delhi/2023 dt. 7-8 2024)
Rajesh Kumar (Shiva Construction Co) v. ACIT (2024) Chamber's Journal-September-P. 111(Delhi)(Trib)

1881 **S. 147: Reassessment-Cash deposit-No mentioning of name of asseessee in Investigation report-Objection not fully disposed of-Reassessment is quashed. [S. 68,133(6), 148]**
The court held that in the investigation report the name of the assessee is nowhere mentioned in the entire list of beneficiaries of dubious transfer of large funds who are named in the report received from the Asstt. Director of IT (Inv.), impugned notice under s. 148 issued on the basis of said report is bad in law. The Tribunal also held that the objections raised by the assessee have not been fully disposed by the AO. (AY. 2011-12)
Manish Rajnarain Goswami v. ITO (2024) 230 TTJ 911 / 240 DTR 169 / 38 NYPTTJ 484 (Mum)(Trib)

1882 **S. 147 : Reassessment- Cash deposits- Search- Salary- Investigation-Reassessment is valid- Unexplained cash-Source is not explained-Addition is affirmed. [S. 68, 69A, 132, 148]**
The court held that AO has discovered during the post-search investigation that assessee has made huge cash deposit in his bank account as against meagre salary income. The reassessment is justified. On merit source is not explained hence the addition is affirmed. (AY. 2012-13)
Prashant Vithoba Navale v. Dy. CIT (2024) 230 TTJ 341 / 240 DTR 145 / 38 NYPTTJ 664 (Pune) (Trib)
Sadashiv Nivruti Navale v. Dy. CIT (2024) 230 TTJ 341 / 240 DTR 145 / 38 NYPTTJ 664 (Pune) (Trib)

1883 **S. 147: Reassessment-Report of Investigation Wing-No tangible material-Reassessment is bad in law-Cash credits-Identity and creditworthiness is established-Addition is deleted. [S. 68 148]**
The court held that AO having reopened assessee's assessment solely on the basis of the report of Investigation Wing which merely created a suspicion that the assessee possibly carried out a transaction of routing unlawful money to convert black money into white

money, without correlating the information received from the Investigation Wing with the accounts/assessment records of the assessee, reopening of assessment is bad in law. On merit the assessee has established the identity and creditworthiness of the creditor. Addition is deleted. (AY. 2010-11, 2012-13, 2014-15, 2015-16)
Sundip Kumar Gupta v. Dy. CIT (2024) 231 TTJ 113 / 241 DTR 65 / 38 NYPTTJ 899 (Kol) (Trib)

S. 147 : Reassessment-Non application of mind-Shell companies-Web site of the Income-tax portal-Re produced information without cross verification-The reopening of assessment is quashed. [S. 148] 1884

The Tribunal held that the AO made reference to a list of 13 companies and observed that as per MCA data and ITD module, these companies are paper/ shell companies having no real existence and business activities. The AO himself has not made any inquiry about the nature of these companies. The Assessee has not taken money from these 13 companies. He just reproduced certain information from other sources and believed it as a gospel truth without analytically cross-verifying with the assessee. There was no application of mind at the end of the AO while forming the belief that income has escaped assessment. The reopening of assessment is quashed. (AY. 2011-12)
Jainco Transmission Ltd. v. DCIT (2024) 230 TTJ 769 / 239 DTR 225 / 38 NYPTTJ 738 (Kol)(Trib)

S. 147: Reassessment-Cash deposits-No addition was made in respect of reasons recorded-Issue which is not subject of recorded reason-Addition cannot be made-Additional ground is admitted. [S. 148, 254(1)] 1885

The court held that if the AO initially has a reason to believe that certain income has escaped assessment, which in fact did not escape assessment owing to operation of provisions of cl. (b) of sub-s. (1) of s. 139, additional grounds are not available to the Revenue for making additions of any other income which did not find place in the s. 148 notice issued to the assessee. Addition is deleted. (AY. 2012-13)
Subhash Runwal v. ITO (2024) 232 TTJ 99/ 243 DTR 177 / 38 NYPTTJ 1252 (SMC) (Pune) (Trib)

S. 147: Reassessment-Incorrect information-Reassessment is not valid-Respect on sale of goods-Addition is deleted. [S. 68, 148] 1886

The court held that the assessment proceedings were conducted by the faceless AO, notice under s. 148 issued by the jurisdictional AO is invalid; reopening is invalid also because the reason recorded for reopening the assessment i. e., non-genuine purchase of goods from a particular company, is absolutely incorrect. On merit the asessee has produced evidence of the sales recorded in its books of account and offered the profit thereon for taxation, and the AO having not made any specific enquiry in this regard, it has to be accepted that the nature of credit in the books of account is sales of goods and, therefore, impugned addition made by the AO under s. 68 is not sustainable. (AY. 2018-19)
Vinayak Traders v. ITO (2024) 232 TTJ 958 / 38 NYPTTJ 1205 (Jodhpur)(Trib)

1887 **S. 147 : Reassessment-Cash deposit-Substantial cash deposit-Return not filed-Reassessment notice is valid. [S. 68,115BBE, 148]**

The court held that the assessee having not filed his return for the relevant assessment year despite the fact that there were substantial cash deposits/credits in his account with a co-operative society during the relevant year, reopening of assessment under s. 147 is valid. (AY. 2015-16 to 2017-18)

Kaushik Pra Vinchandra Gohel v. AO (2004) 231 TTJ 1 (UO) (Ahd)(Trib)

1888 **S. 147 : Reassessment-Survey-Information from Investigation Wing-Re assessment is valid-Expenses through international credit cards-Addition is sustained. [S. 69C, 133A, 148]**

The court held that survey conducted in the case of the assessee having revealed that he was in possession of various credit cards and the Investigation Wing having forwarded the said information to the assessee's AO, reopening of the assessment after further investigation by AO is valid. It also held that the assessee having utilised the funds through several international credit cards which ostensibly belong to his relatives and friends and none of the said owners of the credit cards having filed any proof/ document or affidavit to claim that the same belong to them, addition under s. 69C in the assessee's hand is sustainable. (AY. 2008-09)

Lalit Kumar Modi v. Dy. CIT (2024) 232 TTJ 430 / 243 DTR 385 (Delhi)(Trib)

1889 **S. 147 : Reassessment-Repatriated the amounts invested in non-convertible debentures in the earlier years-No escapement of income-Reassessment notice and order is quashed. [S. 148]**

The court held that during the relevant year, assessee having only repatriated the amounts invested in non-convertible debentures in the earlier years, no income accrued or arose in the relevant assessment year. Reassessment notice and order is quashed. (AY. 2017-18)

BCP V. Singapore Fvci Pte. Ltd. v. ACIT (2024) 229 TTJ 46 (UO) / 159 taxmann.com 63 (Delhi)(Trib)

1890 **S. 147: Reassessment- Objection not disposed by the Assessing Officer- Reassessment is bad in law- Power of enhancement with the CIT(A) cannot cure the defects of non-disposal of objection by the Assessing Officer. [S. 148, 251]**

The Tribunal held that the AO has not disposed the objection raised by the Assessee hence, reassessment is bad in law. The Tribunal also held that the powers of the CIT(A) were co-terminus with that of the AO, and he himself rejected the assessee's objections to reopening of assessment is not justified. The power of reopening of assessment is specifically vested with the AO only. It is the AO who has to form the belief that income of the assessee has escaped assessment. Followed *PCIT v. Sambuddha Tracon (P) Ltd. (ITAT No. 90 of 2022 & IA No. GA 2 of 2022, dt. 15th Nov., 2022) (Cal)(HC).* (AY. 2010-11, 2011-12)

Champalal Omprakash v. ITO (2024) 159 taxmann.com 1397 / 228 TTJ 513 / 235 DTR 113 (Kol)(Trib)

S. 147: Reassessment-Change of jurisdiction-Notice is issued by the Assessing Officer who had jurisdiction-Later case was decentralized-No objection was raised before the Assessing Officer-Ground of jurisdiction is rejected [S. 120, 124, 127 148, 149, 151, 282, 282A, General Clauses Act, 1897, S. 27] 1891

The Court held that the Assessing Officer possessed valid jurisdiction at the time the notice was issued. The Tribunal further observed that the assessee did not raise any objection regarding jurisdiction during the assessment proceedings. The notice was properly issued to the assessee's registered address and was also sent via email through the ITBA portal on 31st March 2017, being received at 1:02 AM on 1st April, which was deemed a valid service of notice. Additionally, proper sanction was obtained prior to issuance. Accordingly, the reassessment was held to be valid. (AY. 2010-11)

Creative World Telefilms Ltd. v. Dy. CIT (2024) 227 TTJ 377 / 239 DTR 290 / 38 NYPTTJ 22 (Mum)(Trib)

S. 147: Reassessment-Within four years-Change of opinion-No new tangible material-Performance guarantee-Deposit-Addition was deleted on merits by CIT(A)-Additional legal ground on reassessment is admitted-Reassessment is quashed on the ground of change of opinion. [S. 37, 69, 148, 254(1), ITAT R 1963. R. 27] 1892

The assessment was reopened and the Assessing Officer has made addition in respect of the performance guarantee and deposits received from parties. On appeal the CIT(A) deleted the addition on merits. On appeal by the Revenue the respondent raised the legal ground of reassessment on the basis of a change of opinion. The Tribunal admitted the legal ground orally and held that in the absence of any fresh material coming to the notice of the AO, the same could not have been reopened merely on the basis of a change of opinion on the basis of the same set of facts as were available on record in the course of the original assessment proceedings. A substitution of a view of a successor AO by re-appreciating the material that was available on record in the course of the original assessment proceedings cannot form a basis for reopening the concluded assessment. Even where a concluded assessment is sought to be reopened by the AO within a period of four years from, it is a must that the AO has fresh material or information with him, that has led to the formation of belief that the income of the assessee chargeable to tax has escaped assessment. The reassessment is quashed. (AY. 2010-11)

ITO v. Bishambhar Dayal Agrawal (2024) 227 TTJ 38 (UO)/ 161 taxmann.com 1063 (Raipur) (Trib)

S. 147 : Reassessment-Long-term capital gains-Sale of shares-Information from Investigation Wing-accommodation entries-Demat-Sales through registered broker-Shares were sold before splitting up of shares-No link between reasons recorded and formation of belief-Reassessment is invalid. [S. 10(38) 45, 148] 1893

The Tribunal allowed the appeal and held that the assessee had bought the shares in the initial public offer by making payments through cheque. The assessee held the shares for more than a year and sold it in the open market through a registered share broker for which securities transaction tax was paid. Corresponding reduction of shares had also been made from the assessee's dematerialised statement. Hence, the very basis of

the formation of belief that income had escaped assessment is fallacious. The Assessing Officer had referred to the split-up of S's shares, which had happened in the year 2015 to allege a malafide motive on the part of the assessee. However, the assessee had actually sold the shares in June, 2014 itself much before the act of splitting up of the shares. Hence, the assessee's case did not fall under the modus operandi mentioned in the Assessing Officer's recorded reasons, which did not have a live link to the formation of the belief of the Assessing Officer. The reopening made under section 147 was based on incorrect assumptions of facts and hence was quashed. (AY. 2015-16, 2017-18)
Subhash Chand Gupta v. ACIT (2024)116 ITR 14 (SN)/ [2025] 210 ITD 118 (Delhi)(Trib)

1894 **S. 147 : Reassessment-Change of opinion-Issue dealt in original assessment proceedings-Reassessment is quashed. [S. 11, 12AA 148]**
The court held, that the issue dealt in original assessment proceedings cannot be reviewed. The Assessing Officer has power to reassess but not review. Order of CIT(A) is affirmed. (AY. 2009-10)
Dy. CIT (E) v. Hindustan Institute of Technology and Science (2024) 115 ITR 24 (SN) (Chennai)(Trib)

1895 **S. 147: Reassessment-Capitalisation fees-Cross examination is denied-Reassessment is quashed. [S. 132, 144A]**
The court held, that the addition was made based on the statement of the director. Though the assessee requested a cross-examination by filing an application before the Additional Commissioner, it was denied to him, which constituted an act of omission on the part of the Assessing Officer and Additional Commissioner in violation of the principles of natural justice. Therefore, the addition made is deleted. (AY. 2008-09)
Aragounder Muthusamy v. ITO (2024)114 ITR 47 (SN)(Chennai)(Trib)

1896 **S. 147 : Reassessment-Residential status-Fictitious loss-Reassessment notice on the assumption as resident-Reopening Based on receipt of information of escapement of income-Assuming as non-resident-Proceedings in status of Non-resident is bad in law-In Income-tax matters, the law to be applied is the law in force for the relevant assessment year unless otherwise stated or implied. [S. 133A, 143(3) 144C(15(b)(ii) 148]**
The court held, that it was well-settled that the law applicable for the relevant assessment year should be seen. During the remand proceedings, the Assessing Officer, after examining the passport, had observed that for the impugned assessment year, the assessee was a resident. However, the Revenue authorities had considered the assessee's residential status on the date of issuance of notice under section 148 to be non-resident, which was not correct, and that the entire proceedings in the status of a non-resident is not sustainable in the eyes of law hence quashed. Relied on *Shree Choudhary Transport Co. v. ITO(2020) 426 ITR 289(SC)* (AY. 2016-17)
Rahul Agarwal v. Dy. CIT (IT) (2024)114 ITR 67 (SN)(Bang)(Trib)

S. 147 : Reassessment-Information from Additional Director of Income-Tax (Inv.)-Advance receivable-Recorded in the books of account-All advances and payments made through banking channels-Re assessment is not valid. [S. 143(3), 148] 1897

The court held that all advance receivable are recorded in the books of account. All advances and payments were made through banking channels and thus, reassessment is not valid. (AY. 2012-13)

Tej Organisers P. Ltd. v. ITO (2024)114 ITR 61 (SN) (Ahd)(Trib)

S. 147 : Reassessment-Survey-Formation of belief of income escaped assessment on wrong facts –Non application of mind-Reason stated non filer-Record shows return was filed on due date-Reassessment notice and consequential order is held to be invalid. [S. 133A, 148] 1898

The court held, that it was on record that the assessee had filed the original return and that the assessee had filed a copy of the original return in response to notice under section 148. In the reasons recorded by the Assessing Officer under section 148, there was no mention of the assessee having filed the original return. There could not be a valid reason to believe that income had escaped assessment due to any failure on the part of the assessee to fully and truly disclose all material facts necessary for assuming jurisdiction under section 148. The omission to record that the assessee had filed the original return, as was evident from the record, clearly demonstrates that the reasons cited were incorrect. Consequently, the Assessing Officer's assumption of jurisdiction based on these erroneous reasons was invalid.. (AY. 2007-08)

Darshan Garg (HUF) v. ACIT (2024)113 ITR 718 (Amritsar)(Trib)

S. 147 : Reassessment-Moratorium in force-Liquidation-Insolvency and Bankruptcy laws-Code has overriding effect over provisions of Act-CIT(A) is wrong in not adjudicating matter on merits-Matter restored to Commissioner (Appeals) for disposal on merits after affording assessee opportunity of hearing through Liquidator. [S. 147, 148, 178(6), (Insolvency and Bankruptcy Code, 2016,S. 14, 33(5),53, 238) 1899

The court held that the Commissioner (Appeals), without going into the merits, deleted the addition as not sustainable in terms of section 33(5) of the Code, on the ground that the assessee was undergoing liquidation. On appeal the Tribunal held that the Assessing Officer and the Commissioner (Appeals) had knowledge of the fact that the assessee, the corporate debtor had gone into liquidation by order dated December 4, 2018 passed under section 33 of the Code by the National Company Law Tribunal and had appointed the official liquidator of the corporate debtor. The Commissioner (Appeals) had erred in not adjudicating the matter on the merits, since it was with respect to the determination of tax dues only, especially when the liquidator himself was pursuing the matter before the first appellate authority. The matter is restored to the Commissioner (Appeals) for disposal on the merits in accordance with law after affording the assessee (corporate debtor) an opportunity of hearing through the liquidator. The non obstante clause in section 238 of the Insolvency and Bankruptcy Code, 2016 clarifies that the Code shall have the effect of overriding the provisions of other laws. Section 178(6) of the Income-tax Act, 1961, as amended with effect from November 1, 2016, makes it clear that the Code will override the provisions of the Act. The Income-tax authorities have limited jurisdiction to assess or determine the quantum of Income-tax dues but have no

authority to initiate recovery of such dues on its own during the period of moratorium in violation of section 14 or section 33(5) of the Code. The Income-tax authorities are like any other creditor, may stake their claim before liquidator or adjudicatory authority as the case may be, within the statutory limitation period provided under the Code for substantiating its claim under the waterfall mechanism related to the order of priority as provided under section 53 of the Code. (AY. 2012-13)
ACIT v. Varun Resources Ltd. (2024)113 ITR 73 (SN)(Mum)(Trib)

1900 **S. 147 : Reassessment-Accommodation entries-Share application money and share premium-Re assessment is held to be invalid. [S. 68, 148 (2)]**
The court held that the Assessing Officer mentioned that the assessee is a beneficiary of accommodation entries by way of share premium and share capital which had escaped assessment. It was clear that the reasons were recorded not on the basis of objective satisfaction of the Assessing Officer based upon information received but merely because the share application money and share premium received by the assessee is not verified and remained unexplained. The reasons recorded had to be read as recorded and there could be no modification, elaboration or substitution thereof. The Order of CIT(A) affirming the reassessment is set aside. (AY. 2012-13)
Tulshi Dealtrade P. Ltd. v. ITO (2024)112 ITR 68 (SN)(Kol)(Trib)

1901 **S. 147 : Reassessment-Accommodation entries-Information based on search action-Reassessment is valid-Depreciation-Disallowance is justified-Income from undisclosed sources-Addition is justified. [S. 32(1)(ii), 143(1), 148]**
The court upheld the reassessment order and observed that on merit the assessee had failed to furnish, either before the lower authorities nor before the Tribunal, the copy of bill, invoice, payment details and installation certificate in support of its claim to depreciation under section 32(1)(ii) of the Act on fixed assets put to use during the year. In the absence of such documentary evidence, there was no reason to interfere with the order of the authorities. As regards income from undisclosed source even before the Tribunal, the assessee had not filed any evidence in support of its claim. Addition is affirmed. (AY. 2012-13)
PNK Space Development P. Ltd. v ITO (2024)110 ITR 71 (SN)(Mum)(Trib)

1902 **S. 147:Reassessment-No addition is made on the basis of recorded reasons-Reassessment is bad in law-The AO lacks jurisdiction to make independent addition-Limited scrutiny-Not obtaining approval for converting limited scrutiny in to complete scrutiny-Order is not valid. [S. 2(22)(e), 143(3), 148]**
The Tribunal ruled in favor of the assessee, quashing the reassessment orders for both assessment years in question. The Tribunal held that since no addition was made on the primary ground for which the reassessment was initiated, the A. O. lacked jurisdiction to make independent additions. The Tribunal also held that the AO has not obtained approval for converting limited scrutiny into complete scrutiny hence, the order is not valid. Relied on *CIT v. Jet Airways (I) Ltd(2011) 331 ITR 326 (Bom)(HC)* (AY. 2013-14, 2015-16)
Pioneer Carbon Co Pvt Ltd Bhilai v. ITO, (2024) 111 ITR 409 (Raipur)(Trib.)

S. 147 : Reassessment –With in four years-No specific query was raised in the course of original assessment on which the reassessment is initiated-Reassessment is valid-Electrical installations- Entitle to depreciation at 15%- Non compete fee-Eligible depreciation as intangible asset- Time share membership fee- Entire membership fee receivable up front at time of enrolment of member is not chargeable in the initial year- On merits additions are set aside to the file of Assessing Officer. [S. 2(47), 4, 14A, 32, 40(a)(i), 148] 1903

The assessee, engaged in selling vacation ownership and providing holiday facilities, was initially assessed under section 143(3) on 28.12.2011. The assessment was reopened under section 147 on the grounds that the assessee claimed depreciation at 15% on electrical installations instead of 10%, and at 25% on non-compete fees by treating them as intangible assets. The CIT(A) dismissed the appeal, however, the ITAT upheld the validity of the reassessment, noting that it was initiated within four years and that no specific queries or findings were made during the original assessment. The Tribunal allowed the assessee's claim of 15% depreciation on items such as air conditioners, refrigerators, and generators, treating them as plant and machinery. The ITAT reversed the disallowance by the AO and CIT(A), holding that non-compete fees qualify as intangible assets eligible for depreciation under section 32. Even for the disallowance under section 14A read with Rule 8D, the AO had included all investments, including strategic investments in subsidiaries from which no exempt income was earned, the Tribunal held that such strategic investments should be excluded when determining average investments under Rule 8D.

The matter was remanded to the AO for verification of the fund flow statement and other relevant details, as the assessee claimed that investments in mutual funds yielding exempt income were made from own funds. Lastly, the Tribunal held that the entire membership fee receivable upfront at the time of enrolment is not chargeable as income in the initial year. Relied on *Geetha Hotels P. Ltd v. CIT (2002) 254 ITR 649 (Mad)(HC)* (AY. 2009-10 to 2015-16)

Mahindra Holidays & Resorts Ltd v. DCIT (LTU) (2024) 112 ITR 582 (Chennai)(Trib.)

S. 147 : Reassessment-Substantial difference in consideration shown on registered sale deed and sale agreement-Reassessment is valid-Cash credit –Unexplained investment-Source is established-Addition is deleted. [S. 68,69, 148] 1904

The court held that there was a substantial difference in consideration shown on registered sale deed and sale agreement, prima facie belief of AO that income had escaped assessment is enough at stage of reopening and merits of matter are not relevant at said stage. Thus, the Reassessment was held to be valid. As regards merits the Tribunal held that the Assessing Officer failed to establish the understatement of sale consideration, the onus of which was upon him. The assessee also showed receipt of loans/financial assistance from various parties totalling to Rs. 9.50 lakhs in support affidavits. It was not disputed that the cheque numbers provided therein found a place in the registered sale deed, hence, the fact of making payment by these persons directly to the seller was established. The Assessee was also able to prove the source of the balance Rs. 2.50 lakhs and Rs. 65,100 towards the stamp duty and registration charges. Accordingly, addition u/s 69 is deleted. (AY 2012-13)

Geeta Devi Sharma (Smt.) v. ITO (2024) 111 ITR 106 / 159 taxmann.com 483 (Jaipur)(Trib.)

1905 **S. 147: Reassessment-Cash credits-Provisions of IBC overriding effect-Department is bound by terms of resolution plan, as approved by NCLT and Income-tax Department was precluded from undertaking any action with respect to any issue/transaction prior to date of commencement of insolvency process in case of assesse. [S. 68, 148, Insolvency and Bankruptcy Code, 2016, S. 5, 31, 238]**

The assessee-company underwent a Corporate Insolvency Resolution Process (CIRP) under the Insolvency and Bankruptcy Code (IBC), 2016. Subsequently, the Assessing Officer reopened the assessment and made additions under section 68 for unexplained cash credits relating to alleged bogus purchases, which the CIT(A) further enhanced by invoking section 69C. The Tribunal held that any tax claim or demand by the Income Tax Department constitutes an operational debt, making the Revenue an operational creditor of the assessee-company. Pursuant to section 238 of the IBC, once a resolution plan is approved by the Adjudicating Authority (NCLT), it is binding on the corporate debtor and all creditors, including the Central Government and statutory authorities. The IBC overrides any inconsistent provisions of other laws, including the Income-tax Act. Accordingly, the Income Tax Department is bound by the terms of the approved resolution plan and cannot initiate or continue any proceedings regarding issues or transactions prior to the commencement of the insolvency process. Therefore, the Assessing Officer was not entitled to make additions for periods before the approval of the resolution plan, and the reassessment order was set aside. (AY. 2011-12)

SEL Manufacturing Co. Ltd. v. DCIT (2024] 113 ITR 243 / 207 ITD

1906 **S. 147: Reassessment-Notice-Sale of investment in Indian company by Assessee, a tax resident of Mauritius-No return filed as capital gain was exempt in terms of Article 13(4) of the DTAA-Reopening on the basis of form 15CA filed by the Assessee-No prima facie satisfaction was recorded-Notice and the consequent reassessment order is set aside-DTAA-India-Mauritius. [S. 148, Form 15CA, Art. 13(4)]**

During relevant AY, the Assessee earned capital gain from sale of its shares in an Indian company and did not file return on ground that same were exempt in terms of article 13(4) of the DTAA. The ITAT observed that the Assessee had made remittances in respect of the aforementioned transaction and filed Form 15CA in respect thereof. Form 15CA formed the basis on which the assessment was reopened by the AO without recording any independent satisfaction of his own. The ITAT held that even though the AO, at the stage of reopening is required to form only a prima facie satisfaction that income chargeable to tax has escapement assessment. In this case, no such prima facie satisfaction was found from the reasons recorded. Hence, there was no escapement of income and the notice issued u/s 148 was held as void ab initio and consequently the assessment was treated as nullity. (AY. 2017-18)

AEP Investments (Mauritius) Ltd. v. Asst. CIT [2024] 109 ITR 89 (SN.)/ 205 ITD 584 (Delhi) (Trib)

1907 **S. 147 : Reassessment-Un explained expenditure-Cash purchase-No transaction was entered during the year-Reopening on the basis of statement of N. K. Vora is not valid-Incorrect fact-Reassessment is quashed. [S. 69C, 148]**

N. K. Vora sales head of Sunshine group, gave a statement that assessee had paid certain sum in cash for purchase of a property from Trincas Agencies & Commerce Pvt

Ltd. Based on that assessment was reopened and Assessing Officer proceeded to hold that assessee paid on money (difference between agreement value and market value) to builders which was added to income of assessee being unexplained expenditure under section 69C. CIT(A)) affirmed the order of the Assessing Officer. On appeal the Tribunal held that sale consideration paid by assessee was more than market value of said property. Since assessee's transaction vide sale agreement dated 13-8-2012 did not fall during year under consideration nor assessee had entered into any agreement with Sunshine group, rather purchased property by virtue of agreement entered into with Trincas Agencies & Commerce Pvt Ltd, reopening was not sustainable in eyes of law being based upon incorrect facts. (AY. 2011-12)
Prashant Rameshchandra Samdani v. ACIT (2024) 204 ITD 547 /227 TTJ 17 (UO) (Mum) (Trib.)

S. 147 : Reassessment-Deemed to accrue or arise in India-Royalties/ fees for technical services-licence fees-AIR information available in AIMS module of ITBA-In year under consideration, neither assessee had made remittances to anyone outside India or in India nor deducted any tax at source-Reassessment is quashed-India-Australia. [S. 9(1)(vi), 9(1)(vii), 148, 194E, 195, Art. 12(3)] 1908

Assessee is a foreign company incorporated in Australia. Based on AIR information available in AIMS module of ITBA, Assessing Officer held that assessee had entered into certain financial transactions and was of view that activities undertaken by assessee were income generating activities, whereas, assessee had not filed any return of income in India under section 139(1). Accordingly, the Assessing Officer reopened assessment under section 147. The Assessee objected to reopening of assessment and submitted that it had entered into an Asian Broadcast Agreement with ESPN granting certain rights for telecasting certain matches played in Australia and that ESPN was a partnership incorporated in USA and had principal place of business at Singapore. It was submitted by assessee that fee received by assessee from another non-resident company was not subject to tax in India and, even otherwise also, fee received could not be treated as royalty under article 12(3) of India-Australia DTAA. However, Assessing Officer rejected submission of assessee and taxed license fee received from ESPN as royalty taxable at hands of assessee in India. DRP affirmed the order of the Assessing Officer. On appeal the Tribunal held that in year under consideration, neither assessee had made remittances to anyone outside India or in India nor deducted any tax at source, therefore, there was no question of assessee filing any TDS return. This fact was accepted subsequently by Assessing Officer while disposing of objections of assessee, thus, reopening of assessment under section 147 was wholly without jurisdiction. (AY. 2013-14)
Cricket Australia v. ACIT (2024) 204 ITD 399 (Delhi) (Trib.)

S. 147: Reassessment- Information from investigation wing-Borrowed satisfaction-Cash deposits-Reassessment order is set aside. [S. 143(3), 148] 1909

The assessment was reopened on the basis of information received from the investigation wing that funds have been transferred to the Assessee out of cash deposits made in six bank accounts of five parties and that the unaccounted cash has

been transferred to the account of the Assessee by rotation of funds. ITAT observed that AO has merely relied on the information received on a borrowed satisfaction without recording his own reasons. Further, even the amounts which were stated to be allegedly deposited in the bank account of the Assessee was not added to the income of the Assessee. Relied on *ACIT v. Meenakshi Overseas Pvt. Ltd. [2017] 82 taxmann.com 300 (Del), CIT v. SFIL Stock Broking Ltd. [2010] 325 ITR 285 (Del), DCIT v. Great Wall Marketing Pvt. Ltd. [ITA No. 660/KOL/2011, dated 03.02.2016]* followed. (AY. 2009-10, 2010-11)
Ujjala Suppliers P. Ltd. v. ITO [2024] 109 ITR 16 (SN)(Kol)(Trib)

1910 **S. 147: Reassessment-Borrowed satisfaction-The reopening of an assessment solely on borrowed satisfaction, devoid of independent scrutiny, lacks validity. [S. 148]**
The Revenue, alleging that the assessee earned bogus long-term capital gains (LTCG) from penny stocks and received commission for accommodation entries, reopened the assessment based on information from the Investigation Wing. The Assessing Officer, after obtaining approval from the competent authority, made additions under section 68 for unexplained cash credits and also added commission income for arranging the alleged accommodation entry of LTCG, as the assessee had claimed exemption under section 10(38) of the Income Tax Act for these gains. The assessee challenged the reopening and the additions before the Commissioner of Income Tax (Appeals) (CIT(A)), National Faceless Appeal Centre (NFAC), Delhi, who dismissed his appeal. The assessee then filed an appeal before the Tribunal where it was contended that the reopening was invalid as the reasons recorded by the AO were vague, contradictory, and based on borrowed satisfaction without any independent application of mind. He also submitted that he had purchased and sold the shares through genuine transactions and had disclosed all the material facts in his return of income. He relied on various judicial precedents to support his case. The Tribunal, after hearing both the parties, found merit in the assessee's contentions and held that the reasons recorded by the AO were not clear and unambiguous and did not establish any link between the information received and the escapement of income by the assessee. The Tribunal also observed that the AO had stated different amounts of LTCG and commission in the reasons and the assessment order and had used the terms "his/her" and "she" interchangeably, which showed non-application of mind. The Tribunal further noted that the AO had not examined the details of the purchase and sale of the shares, the mode of payment and receipt, and the source of funds of the assessee, and had merely relied on the information from the Investigation Wing without any independent verification. The Tribunal, therefore, quashed the reopening and the additions made by the AO and allowed the appeal of the assessee. (AY. 2013-14)
Dinesh Gangwal v. ITO [2024] 109 ITR 42 (SN) (Kol)(Trib)

S. 148 : Reassessment –Notice-Writ petition is dismissed on the ground with liberty to assessee to raise all contentions in reply before Assessing Officer and also direction for grant of personal hearing-Income-On SLP the Department stated that it had no objection to quash the notice as the transactions between a mother and son-Appeal is allowed [S. 147, Art. 136] 1911

Dismissing the writ petition, the Court held that the assessee should raise all relevant contentions and directed that a personal hearing be granted before passing the order. In the Special Leave Petition (SLP), the Department stated that it had no objection to quashing the notice, as the transactions in question were between a mother and her son. Accordingly, the appeal was allowed.

Mahendra Gala v. ITO (2024) 471 ITR 758/(2025) 302 Taxman 1 (SC)

Editorial : Order of High Court set a side, Mahendra Gala v. ITO (2024) 471 ITR 757 (Bom)(HC)

S. 148: Reassessment-Notice-Limitation-Factual finding-Dispatch date-High Court dismissed on the ground that no substantial question of law-SLP dismissed. [S. 147, Art. 136] 1912

Dismissing the appeal of the assessee the Court held that the record did not show that the issue of limitation had been raised before the Tribunal on a factual foundation that though notice under section 148 of the Income-tax Act, 1961 bore the date March 31, 2017, it was not issued on that date but it was put in the course of dispatch after that date. Since there is no substantial question of law, the SLP of the assessee dismissed.

Kamaruddin Mansori v. ITO (2024)470 ITR 572 (SC)

Editorial : Kamaruddin Mansori v. ITO (2024)470 ITR 570 (Raj) (HC)

S. 148 : Reassessment-Notice-Not served on last known address-Participating in reassessment proceedings would not constitute waiver of jurisdictional issue-Order of High Court is affirmed-SLP of revenue dismissed due to low tax effect. [S. 147, 268A Art. 136] 1913

The Tribunal held that notice under section 148 was not issued at correct address because address given in notice was not last known address of assessee. The Tribunal also held that mere fact that assessee had participated in reassessment proceedings despite not having been issued or served with notice under section 148 in accordance with law would not constitute a waiver of said jurisdictional requirement. The Tribunal set aside reassessment order. The High Court upheld Tribunal's order. On SLP, revenue stated that this petition be dismissed on ground of low tax effect as being covered by Circular No. 17 of 2019 dated 8-8-2019 issued by Department of Revenue, Ministry of Finance. (AY. 2001-02)

PCIT v. Atlanta Capital (P.) Ltd. (2024) 297 Taxman 379 /464 ITR 346/ 336 CTR 748 (SC)

Editorial : PCIT v. Atlanta Capital (P) Ltd (2020) 119 taxmann.com 292/ (2024) 464 ITR 341 (Delhi)(HC)

S. 148 : Reassessment –Amalgamation-Notice issued to non existing company-Non-est and void-SLP against the order of High Court dismissed. [S. 147, Art. 226] 1914

The Assessee-company by a communication dated 28-4-2021 informed Assessing Officer about factum of non-existence of company Elitecore Technologies Private Limited ("ETPL")

on account of its amalgamation with assessee-company with effect from 29-9-2015 and emphasized that since notice had been issued in name of a non-existing entity, same was non est and void ab initio. Despite objections of assessee, Assessing Officer issued a fresh notice requiring non-existent entity to show cause as to why proposed variation be not made and passed assessment order against it followed by penalty notice and demand notice. The High Court held that since notice under section 148, assessment order as also penalty notice and demand notice had been issued in name of a non-existing entity despite having been informed about factum of amalgamation, assessment order and notices were untenable and set aside. SLP of revenue dismissed. (AY. 2013-14, 2014-15)
Dy. CIT v. Sterlite Technologies Ltd. (2024) 297 Taxman 134/462 ITR 462 (SC)
Editorial: Sterlite Technologies Ltd v. Dy. CIT(2023) 152 taxmann.com 381/(2024) 462 ITR 157 (Bom)(HC)

1915 **S. 148 : Reassessment –Notice-Monetary limits-Appeal of Revenue is dismissed on account of low tax effect. [S. 268A, Art. 136]**
Notice under S. 148 as followed by the order passed by the AO/CIT was set aside by the Tribunal way back on 21st June, 2013. Subsequently the order of the Tribunal was upheld by the High Court on 15th September, 2015. The proceedings initiated in 2008 have concluded by the order of the High Court in 2015. The court held that a decade has passed thereafter, hence no interference is made with the judgment of the High Court in CIT v. Chetan Gupta (2015) 126 DTR 401 (Delhi)(HC). Circular No. 17 of 2019, dt. 8th Aug., 2019.
PCIT v. Atlanta Capital (P) Ltd. (2024) 336 CTR 748 (SC)
CIT v. Chetan Gupta (2024) 336 CTR 748 (SC)
Editorial: CIT v. Chetan Gupta (2015) 126 DTR 401 (Delhi)(HC)

1916 **S. 148:Reassessment-Notice-Amalgamation-Intimated to Assessing Officer-Notice issued to non-existent company is unsustainable-Special Leave Petition dismissed. [S. 147, Art. 136]**
The assessee was amalgamated with a company A by an order of the court dated October 30, 2015 with effect from April 1, 2015. The amalgamation was intimated to the jurisdictional Assessing Officer and this was duly acknowledged. On a writ petition against notice under section 148 on March 27, 2021 to reopen the assessment under section 147 for the assessment year 2014-15 against the assessee, the High Court held that notice against the assessee which was not in existence on the date of issue of notice was unsustainable. SLP of Revenue dismissed. (AY. 2014-15)
ITO v. Abhishek Caplease Pvt. Ltd. (2024)461 ITR 263 /298 Taxman 449 (SC)
Editorial : Abhishek Caplease Pvt. Ltd v. ITO (2024) 461 ITR 261 (Guj)(HC)

1917 **S. 148 : Reassessment –Notice-Writ petition is dismissed on the ground with liberty to assessee to raise all contentions in reply before Assessing Officer and also direction for grant of personal hearing-Income. [S. 147, Art. 226]**
On writ dismissing the petition the court held that the assessee shall raise all contentions and also directed AO to grant a personal hearing before passing the order.
Mahendra Gala v. ITO (2024) 471 ITR 757 (Bom)(HC)

Editorial : Order of High Court set aside, Mahendra Gala v. ITO (2024) 471 ITR 758/ (2025) 302 Taxman 1 (SC)

S. 148 : Reassessment –Notice –Protective assessment-Issuance of notice after initiation of corporate Insolvency resolution process and after initiation of corporate insolvency resolution process and giving effect to resolution plan-Notices and subsequent proceedings of reassessment and penalty and consequential orders are reversed and set aside-Assessing Officer should modify demand giving effect to order of adjudicating Authority in Corporate Insolvency process under Code-Revenue may take whatever steps available to take action, if any, against ex-promoter and other third parties in accordance with law-Notices, subsequent proceedings of reassessment and penalty and consequent orders are reversed and set aside. [S. 133(6), 144, 147, 156A, 271(1)(c), 274, Insolvency and Bankruptcy Code, 2016, S. 31, 238, Art. 226] 1918

The Assessee-company is undergoing Corporate Insolvency Resolution Process (CIRP) and resolution plan was approved by NCLT. As per resolution plan, value of all dues including income tax dues was treated as nil and was deemed to have been fully discharged and settled for any period prior to closing date. After resolution plan had been given effect, department initiated reassessment proceedings against assessee by issuing a notice under section 148. On facts, issue of notice under section 148 to assessee company after approval of resolution plan for a period prior to closing date was invalid and bad in law, having been issued contrary to provisions of Code and Resolution Plan. The Court also held that the Assessing Officer should modify demand giving effect to order of adjudicating Authority in Corporate Insolvency process under Code. The Court also observed that Revenue may take whatever steps available to take action, if any, against ex-promoter and other third parties in accordance with law. Accordingly notices, subsequent proceedings of reassessment and penalty and consequent orders are reversed and set aside. Relied on *Ghanashyam Mishra and Sons Pvt Ltd v. Edelweiss Asset Resolution Co Ltd (2021) 227 Comp Cas 251 (SC) / (2021) 91 GSTR 28 (SC)/ (2021) 9SCC 657.* (AY. 2013-14)

Alok Industries Ltd. v. ACIT (2024) 471 ITR 536 /161 taxmann.com 285 (Bom) (HC)

S. 148: Reassessment-Notice-Claim for deduction of interest-Intimation is not an order of assessment-Assessment for the first time under section 147-Entitle for permissible deductions under the law. [S. 43B, 143(1), 147] 1919

The assessee filed original return and revised return of income prior to the issuance of any notice under section 148. The assessee had claimed deduction of interest paid to financial institutions and banks during the previous years relevant to the assessment years 1999-2000 and 2000-01. No intimation under section 143(1)(a) was sent by the Assessing Officer. Even if the acknowledgment of return was treated to be an intimation under section 143(1)(a), yet it was not an assessment order. Since there was no original assessment proceeding and assessment order, the question of reassessment did not arise. The order passed by the Assessing Officer was not a reassessment order but an assessment order pursuant to the original and revised returns filed by the assessee. The assessee claimed interest as deductible expenditure under section 43B and its admissibility was not disputed by the Assessing Officer. The proceedings before the

Assessing Officer not being reassessment proceedings, the assessee had lawfully claimed interest as a deductible expenditure which the Assessing Officer was bound to have allowed. The charge of tax was on the income and not on gross receipts. It was the profits and gains of business or profession which had to be computed after deducting the losses and expenditures incurred for business. Interest is an allowable expenditure. The Order of the Tribunal is set aside. Relied on *CIT v. Sun Engineering Works P Ltd. [1992] 198 ITR 297 (SC), (1992) 4 SCC 363* distinguished. (AY. 1999-2000, 2000-01)
Khar Hospitality India Ltd. v. CIT (2024)471 ITR 200 (Cal) (HC)

1920 **S. 148: Reassessment-Notice-Limitation-Factual finding-Dispatch date-No substantial question of law. [S. 147, 260A]**
Dismissing the appeal of the assessee the Court held that the record did not show that the issue of limitation had been raised before the Tribunal on a factual foundation that though notice under section 148 of the Income-tax Act, 1961 bore the date March 31, 2017, it was not issued on that date but it was put in the course of dispatch after that date. It is a question of fact and there is no substantial question of law.
Kamaruddin Mansori v. ITO (2024)470 ITR 570 (Raj) (HC)
Editorial : SLP dismissed, Kamaruddin Mansori v. ITO (2024)470 ITR 572 (SC)

1921 **S. 148 : Reassessment –Notice-Limitation-Department is directed to examine each and every case relating to the deemed notices issued under S. 148, in light of the observations made by the Supreme Court in UOI v. Rajeev Bansal (2024) 340 CTR 865 / 242 DTR 297 (SC) and reach to a conclusion, as to whether the proceedings would fall within the limitation or have become time barred. [S. 144B, 147, 148, 148A, 149, Art. 226]**
The court held that the Department is directed to examine each and every case relating to the deemed notices issued under S. 148, in light of the observations made by the Supreme Court in *UOI v. Rajeev Bansal (2024) 340 CTR 865 / 242 DTR 297 (SC)* and reach to a conclusion, as to whether the proceedings would fall within the limitation or have become time barred. The Court observed that the while examining the cases the Assessing Officer has to observe the observation in paragraph 53, 110, 111, 112, 114 of Supreme Court in *UOI v. Rajeev Bansal (2024) 340 CTR 865 / 242 DTR 297 (SC)* and also cases which fall less than the value of Rs. 50,000 would have to be dropped. If any asseseee is still aggrieved by the order passed, remedy in terms of the provision of the Act can be available to him.
Kulwant Singh v. UOI (2024) 341 CTR 700 / 243 DTR 449 / 8 NYPCTR 1428 (P&H) (HC)

1922 **S. 148 : Reassessment –Notice-Dead person-Notice and order is void ab initio. [S. 147, Art. 226]**
The Petitioner challenged the action of the respondents against Mr. Gene Gracious, the deceased husband of the petitioner, by issuance of reassessment notice. Mr. Gene Gracious against whom these notices were issued, expired. The notice issued under Section 148 preceded by earlier actions is required to be held to be non-est and void ab initio. The department cannot maintain issuance of the notice as impugned to a dead

person. Even the legal heirs cannot be bound by such order which is non-est, void ab initio. [WP(L) 3460 of 2024, Dated 10/12/2024)
Mary Gene Gracious v. ITO [2025] 170 taxmann.com 82 (Bom (HC)

S. 148: Reassessment-Notice-Barred by limitation-Notice and order is quashed. Assessment year 2015-16-Barred by limitation. [S. 149(1)(b), Art. 226] 1923
The Assessee-Petitioner challenged the legality of the notice issued under Section 148 of the Act for the A.Y. 2015-16 on the ground that the proceedings were barred by limitation, considering the provisions of Section 149(1)(b) of the Act which provides a time limit of six years from the end of the relevant assessment year for issuing notice under Section 148 of the Act. As the relevant assessment year is assessment year 2015-16, the six years has expired on 31 March 2022 and for such reason, the impugned proceedings against the Petitioner could not have been adopted. Relied on *Hexaware Technology Ltd. v. ACIT (2024) 162 Taxmann.com 225 (Bom)(HC), Akhila Sujith v.. ITO(IT) [2024] 166 taxmann.com 478 (Bom)(HC). [WP (L) No. 25601 of 2024, Dated: 18/11/2024* (AY. 2015-16)
20 Media Collective Pvt. Ltd. v. Pr. ACIT [2025] 170 taxmann.com 331 (Bom) (HC)

S. 148 : Reassessment-Notice-After approval of resolution plan by NCLT for a period prior to approval of resolution plan-Notice is quashed. [S. 147 Insolvency and Bankruptcy Code, 2016, S. 31, Art. 226] 1924
The Petitioner-Assessee was admitted into a CIRP by an order dated July 11, 2018 passed by the National Company Law Tribunal, New Delhi. The reassessment proceedings pre-date the CIRP. They would relate to the period prior to the approval of the resolution plan of the Assessee, and therefore stand extinguished. Upon completion of the CIRP, the Assessee has completely changed hands and has begun on a clean slate under new ownership and management. On writ, the reassessment proceedings initiated after approval of resolution plan for a period prior to approval of resolution plan of petitioner is quashed and set aside. (AY. 2016-17)
Uttam Galva Metallics Ltd. v. ACIT [2024] 166 taxmann.com 492 /471 ITR 592 / 246 COMP CASE 678 (Bom) (HC).

S. 148 : Reassessment –Notice-Dissolved company-Notice and assessment order is quashed. [S. 2(31), 143(3), 147, Art. 226] 1925
The Assessing Officer issued a notice under section 148, for reopening assessment of certain company. The Assessee-director of said company pointed out that company was no longer in existence as it had been dissolved. Despite being informed of the dissolution of company, Assessing Officer proceeded to pass assessment order. On writ, the Court held that once a company is dissolved, it ceases to exist in eyes of law and thereafter, it cannot be treated as a person against whom assessment proceeding can be initiated under Act. Notice issued in case of dissolved company is not a valid notice and consequently, assessment order passed is also quashed. (AY. 2008-09)
Jitendra Chandralal Navlani v. UOI (2024) 298 Taxman 15 (Bom.)(HC)

1926 **S. 148 : Reassessment-Notice-Seized documents, computers, hard disks etc. -Not taken serious measures to release the documents seized-Writ petition is dismissed. [S. 147, Art. 226]**

The reassessment proceedings were initiated against assessee and the Assessee filed writ petition contending that Crime Branch had seized certain documents, computers, hard disks, etc. from assessee and until all those were released, assessee would not be in a position to effectively respond to notices of reassessment. Assessee sought for a direction to revenue to release all seized documents, data, articles and further to stay all further de novo assessment proceedings. The Court held that there was a vague and omnibus statement in petition that assessee pursued matter for release in terms of order passed by Judicial Magistrate, however, this vague and omnibus statement was not backed by any material, documents, etc. There was nothing on record to indicate that assessee took any serious steps for obtaining documents/material/hard disks from crime branch. Since it was apparent that assessee simply wanted to stall reassessment proceedings/ de novo proceedings at any cost, writ Court could not assist assessee in such endeavours. (AY. 2010-11)

Francisco Xavier Pacheco v. State of Goa (2024) 298 Taxman 660 /339 CTR 572 (Bom.) (HC)

1927 **S. 148 : Reassessment-Notice-Limitation-Time limit to issue a notice under section 148 had already expired on 1-4-2021 and thus, reopening of assessment for assessment year 2013-14 after 31-3-2021 was invalid, without jurisdiction and barred by limitation. [S. 149, Art. 226]**

The Assessing Officer issued a notice under section 148 after amendment of section 149 by Finance Act, 2021 with effect from 1-4-2021 on basis of provisions that existed before amendment seeking to reopen assessment for assessment year 2013-14. The Court held that for assessment year 2013-14 time limit to issue a notice under section 148 had already expired on 1-4-2021 and thus, reopening of assessment for assessment year 2013-14 after 31-3-2021 was invalid, without jurisdiction and barred by limitation. Relied on *New India Assurance Company Ltd. v. Asstt. CIT [2024] 158 taxmann.com 367 (Bom)(HC).* (AY. 2013-14)

Amol Ramrao Dahale v. Pr. CCIT (2024) 298 Taxman 467 (Bom.)(HC)

1928 **S. 148 : Reassessment –Amalgamation-Notice issued to non-existent company- Order is non-est and void. [S. 147, Art. 226]**

The assessee-company, by a communication dated 28-4-2021, informed the Assessing Officer about the factum of non-existence of company Elitecore Technologies Private Limited ("ETPL") on account of its amalgamation with the assessee-company with effect from 29-9-2015 and emphasised that since notice had been issued in the name of a non-existing entity, the same was non est and void ab initio. Despite objections of the assessee, the Assessing Officer issued a fresh notice requiring the non-existent entity to show cause as to why the proposed variation should not be made and passed an assessment order against it, followed by a penalty notice and a demand notice. The High Court held that since notice under section 148, assessment order, as also penalty notice and demand notice, had been issued in the name of a non-existent entity despite having

been informed about the factum of amalgamation, the assessment order and notices were untenable and set aside. (AY. 2013-14, 2014-15)
Sterlite Technologies Ltd v. Dy. CIT(2023) 152 taxmann.com 381/(2024) 462 ITR 457 (Bom) (HC)
Editorial : SLP dismissed, Dy. CIT v. Sterlite Technologies Ltd. (2024) 297 Taxman 134/462 ITR 462 (SC)

S. 148: Reassessment-Notice-Notice issued in the name of deceased-Not enforceable in law-legal heirs submitted proof of death of assessee-Notice is null and void. [S. 147, 292BB, Art. 226] 1929
The notice under section 148 was issued to the deceased assessee after his death and could not have been lawfully served upon him. Since the deceased's son, not the assessee, participated in the proceedings, the primary condition for invoking section 292BB i. e., participation by the assessee was not satisfied. Initiating and continuing proceedings against a deceased person, even after being informed of the death, was held to be unsustainable. Section 292BB is intended to prevent an assessee from taking advantage of procedural defects only when the proceedings are known to and understood by the assessee; it cannot cure the defect of initiating proceedings against a deceased individual. The notice issued in the name of the deceased was thus unenforceable in law. The legal heirs, who were not statutorily obligated to inform the Department of the assessee's death, submitted sufficient documentation to establish the fact. Accordingly, the notice and all consequential proceedings against the deceased were declared null and void, and the notice under section 148 was quashed. (AY. 2016-17)
Devendra (legal heir of Vasudeo Damduji Jambhulkar) v. Addl. Jt. CIT [2024] 461 ITR 463 (Bom)(HC)

S. 148: Reassessment-Notice-After the expiry of four years-Order passed by Designated Authority under Kar Vivad Samadhan Scheme, 1998 determining tax arrears-Assessing Officer has no jurisdiction to issue notice for reopening assessment thereafter-No material furnished in declaration shown to be false-Reassessment is without jurisdiction. [S. 147, Finance (No. 2) Act, 1998, S. 90, 91, Kar Vivad Samadhan Scheme, 1998, [1998] 232 ITR (St.) 31), Art. 226] 1930
The Court allowed the petition and held that there was no order withdrawing the certificate issued by the Commissioner determining the tax arrears in form 3 dated January 8, 1999 under the 1998 Scheme. It was not the case of the Department that there was any misdeclaration made by the assessee under the 1998 Scheme. On this ground alone the notice was unsustainable. Since the issue of reopening the assessment under section 147 had been raised on the issue of assessee's portfolio management scheme all the details including with the particular entity had been furnished by the assessee as required by the Assessing Officer during the assessment proceedings and had been dealt with in detail in the assessment order. Therefore, the reopening of assessment after the period of four years was merely on the basis of change of opinion of the Assessing Officer and did not constitute justification or reason to believe that income chargeable to tax had escaped assessment. The reasons to believe did not state that there was any failure on the part of the assessee to disclose fully and truly all material facts

necessary for its assessment. The notice dated January 15, 2000 under section 148 was without jurisdiction and unsustainable. (AY. 1992-93)
Citibank N. A. v. S. K. Ojha, Joint CIT [2023] 151 taxmann.com 234 / (2024)460 ITR 310 (Bom)(HC)

1931 **S. 148 : Reassessment –Notice-Notice served at wrong Village Address-The service of a valid notice is condition precedent for the validity of notice and the foundation for the initiation of reassessment proceedings-Notice and consequent reassessment proceedings set aside. [S. 142(1), 147, Art. 226]**
The assessee was served with a notice under section 142(1) directing it to comply with the notice issued under section 148. The assessee communicated that he did not receive any notice under section 148 and the reasons for reopening the assessment under section 147. Despite the letters and objections of the assessee the reassessment proceedings were continued. On writ, the Court allowed the petition and held that the Revenue itself had conceded that the notice under section 148 was not served on the assessee at any point of time. The notice was served on the wrong address by stating the incorrect name of the village which was not disputed by the Revenue and had also been recorded by the authorities while rejecting the objections of the assessee. Therefore, in the absence of actual service, the notice issued under section 148 and the initiation of reassessment proceedings under section 147 were not valid and hence quashed and set aside. (AY. 2012-13)
Ishwarbhai Thakorbhai Patel v. ITO (2024)467 ITR 558 (Guj)(HC)

1932 **S. 148 : Reassessment –Notice-Dead person-Notice issued to a dead person to reopen the assessment is null and void. [S. 147, Art. 226]**
The court held that notice issued to a dead person to reopen the assessment is null and void, hence the notice and all consequential proceedings arising therefrom in the name of the deceased assessee are not sustainable.
Meet Lalwani L/H of Late Mrs Amita Lalwani v. ITO (2024) 337 CTR 602 (MP)(HC)

1933 **S. 148 : Reassessment-Notice-Neither revised return is filed in response to notice nor informed to the Assessing Officer to treat the original return in response to notice under section 148-Not entitle to challenge on the ground that recorded reason was not provided. [S. 143(2), 144, 147, Art. 226]**
The assessee sought quashing of assessment order and the consequential notice of demand on the ground that reasons for re-opening the assessment were not provided. Dismissing the petition the Court held that upon receipt of notice under section 148, the assessee has two options, first is to file a revised return of income and request for reasons for re-opening assessment and second is to inform Assessing Officer that original return of income should be treated as return in response to notice under section 148. On the facts, the assessee had not resorted to either option and thus, assessee was not entitled to challenge reassessment proceedings on ground that reasons for re-assessment were not provided. Accordingly the petition is dismissed. (AY. 2016-17)
Swapna Manuel v. ACIT (2024) 297 Taxman 573 /465 ITR 769 (Mad.)(HC)

S. 148 : Reassessment-Notice-Deceased-Notice for reopening of assessment of a dead person is null and void. [S. 148, Art. 226] 1934

The reassessment proceedings was initiated upon deceased. The widow and legal heir of deceased-assessee filed a writ petition for annulling said reassessment proceedings. She contended that the deceased's death was timely communicated and argued that the notice issued to a dead person lacked enforceability. The Court allowed the petition and quashed all the notices against the deceased. The Court also observed that liberty is given to the respondent to reinitiate proceedings against the petitioner/legal heir of deceased Shri Kamal Kumar Saxena, if so advised. (AY. 2015-16)

Urmila Saxena v. CBDT (2024) 297 Taxman 318 (MP)(HC)

S. 148: Reassessment-Notice-Dead Person –Notice in the name of deceased assessee-Intimation by the legal heir to the Assessing Officer informing the notice is dead-Second notice in the name of legal heir-Reassessment order in the name of deceased is not curable defects-Notice and order is quashed. [S. 147, 292B, 292BB, Art. 226] 1935

The Court allowed the petitions and held that when the legal heir of the deceased filed the return of income and sought the reasons for reopening the assessment after intimating the death of the original assessee, an Order passed by the AO in the name of the dead person was a nullity and liable to be set aside irrespective of the fact that legal heir participated in the assessment proceedings. (AY. 2015-16)

Pravinchandra A Shah v. UOI [2024] 461 ITR 307/[2023] 154 taxmann.com 616 (Guj)(HC)

S. 148 : Reassessment –Notice-Amalgamation-Intimated to Assessing Officer and duly acknowledged-Notice issued to non-existent company is unsustainable. [S. 147, Art. 226] 1936

The assessee was amalgamated with a company A by an order of the court dated October 30, 2015 with effect from April 1, 2015. The amalgamation with A was intimated to the jurisdictional Assessing Officer by communications dated November 23, 2015 and January 27, 2016 which were duly acknowledged. The Assessing Officer issued a notice under section 148 on March 27, 2021 to reopen the assessment under section 147 for the assessment year 2014-15 against the assessee. On a writ allowing the petition, the Court held that the notice dated March 27, 2021 issued under section 148 for the assessment year 2014-15 against the assessee which was not in existence on the date of issue of notice was unsustainable. (AY. 2014-15)

Abhishek Caplease Pvt. Ltd. v. ITO (2024)461 ITR 261/ 161 taxmann.com 40 (Guj)(HC)

Editorial : SLP rejected, ITO v. Abhishek Caplease Pvt. Ltd [2024] 298 Taxman 449 /461 ITR 263 (SC)

S. 148: Reassessment-Notice-Limitation-Amendment in law-Effect of amendment with effect from 1-4-2021-Notices dated 31-3-2021, but dispatched on 1-4-2021 or thereafter from Income-Tax Business application portal-Notices barred by limitation. [S. 147, 148, 149, 151, Art. 226] 1937

The last date for service of notice and initiating proceedings under section 148 of the Income-tax Act, 1961 in the case of the assessees was coming to an end on March 31, 2021 and in the majority of the cases, the notice was dated March 31, 2021 but had

been issued from the office of the Department either on April 1, 2021 or on subsequent dates. The Assessee filed writ petitions contending that the notices were barred by limitation, allowing the petitions, that all the notices under section 148 had been issued (not served) on April 1, 2021 or on a later date. The question of service of these notices and the date of service of notices upon the assessees was of no relevance or consequence since the notices had been dispatched from the Department on or after April 1, 2021 which itself was beyond the period of limitation. All the notices issued under section 148, dated March 31, 2021, were barred by limitation under sections 148 and 149, since these notices had left the Income-tax Business Application portal on or after April 1, 2021 and therefore, were unsustainable.
Kalyan Chillara v. Dy. CIT (2024)465 ITR 729/341 CTR 418 /242 DTR 438 /167 taxmann. com 500 (Telangana)(HC)

1938 **S. 148: Reassessment-Notice-Service of notice-Mandatory-Assessing Officer though aware of new address of assessee issuing notice at old address-No statutory obligation on assessee to update address in Permanent Account Number database-Participation in reassessment proceedings without service of notice does not validate notice and proceedings-Order of Tribunal quashing the assessment is affirmed. [S. 143(1), 147, 149(1)(b), 260A, 282(1), 292BB, Civil Procedure Code, 1908, Order V, rule 12]**
Dismissing the appeal the Court held that as found by the Tribunal the notice dated March 27, 2008 under section 148 for reopening the assessment under section 147 for the assessment year 2001-02 was not issued at the correct address of the assessee. Such notice, sent by speed post, but having not been returned unserved, would be of no avail since the address given in the notice was not the last known address of the assessee. No provision in the Act obliged the assessee to ensure that his changed address was entered in the permanent account number database failing which he was precluded from insisting on the notice under section 148 being issued to him at the known address and being served upon him. For the assessment year 2005-06 and the subsequent assessment years, the assessee had disclosed his new address. The Assessing Officer had sent letters and the intimation under section 143(1) dated January 25, 2008 for the assessment year 2006-07 at the new address of the assessee. Hence, though the Assessing Officer was aware of the change of address of the assessee, he had issued the notice under section 148 at the old address. No legal error was committed by the Tribunal in holding that there was no proper service of notice on the assessee under section 148. The requirement of both the issuance and the service of notice upon the assessee for the purposes of sections 147 and 148 of the Income-tax Act, 1961 are mandatory "jurisdictional requirements". The mere fact that an assessee participated in the reassessment proceedings despite not having been issued or served with the notice under section 148 in accordance with law will not constitute a waiver of such jurisdictional requirement. Relied on *CIT v. Chetan Gupta (2016) 382 ITR 613 (Delhi) (HC) and R. K. Upadhyaya V. Shanabhai P. Patel (1987) 166 ITR 163 (SC).* (AY. 2001-02)
PCIT v. Atlanta Capital Pvt. Ltd. (2024) 464 ITR 341 (Delhi)(HC)
Editorial :SLP dismissed on the ground of low tax effect, PCIT v. Atlanta Capital Pvt. Ltd. (2024) 464 ITR 346 (SC)

S. 148: Reassessment-Notice-Non-resident-Non jurisdictional AO-Revenue could not demonstrate that when the notice was issued on 30th March, 2022, ITO, Ajmer, had valid jurisdiction over the assessee-Reassessment is quashed. [S. 147] 1939

The Tribunal held that the assessee was a non-resident on the date of issue of notice under s. 148 and his jurisdiction remained with International Charge Jaipur, hence the ITO, Ajmer had no jurisdiction over the assessee and, therefore, the reassessment made pursuant to the notice issued by the said AO is not valid. (AY. 2018-19)

Sunil Chablani v. CIT (IT) (2024) 231 TTJ 361 / 38 NYPTTJ 1009 (Jodhpur)(Trib)

S. 148:Reassessment-Notice-Non-Resident-Jurisdiction Of Assessing Officer-Additional ground-Admitted-Reassessment notice and consequential order is quashed. [S. 69, 143(3), 144C, 147] 1940

The Tribunal admitted the additional ground on jurisdiction. The Tribunal held that the assessee is a non-resident Indian according to his permanent account number profile. The Assessing Officer, without knowing the status of the assessee, had assumed jurisdiction. The faceless assessing unit had made a request to transfer the case from them because it was the case of a non-resident individual, who could be assessed only at the international charge. As a result, the ITO at Ajmer had no jurisdiction to issue the notice under section 148. Accordingly the notice and the consequential assessment order is quashed. (AY. 2018-19)

Sunil Chablani v. CIT (IT) (2024)116 ITR 187 (Jaipur)(Trib)

S. 148: Reassessment-Notice-Initiation of reassessment proceedings based on wrong recorded facts-Mistake cannot be treated as inadvertent-Reopening is void ab initio. [S. 147] 1941

The court held that the reasons recorded were factually incorrect which could not have led the Assessing Officer to arrive at a valid satisfaction that income for the year under consideration had escaped assessment. The plea of the Department that the recording of wrong facts by the Assessing Officer was an inadvertent mistake, is of no avail and did not validate the recorded reasons. Thus, the reassessment order was quashed as void ab initio. (AY. 2011-12)

Kissan Fats Ltd. v. Dy. CIT (2024)116 ITR 59 (Trib) (SN)(Chd)(Trib)

BCL Industries Ltd v. Dy. CIT (2024)116 ITR 59 (Trib) (SN)(Chd)(Trib)

S. 148: Reassessment-Charitable trust-Non-Registration-Reassessment is quashed-Circular No. 1 of 2015, Dated 21-1-2015 (2015) 371 ITR 22(St) [S. 2(15), 10(23C)(iv), 11, 12A(2), Maharashtra Nurses Act, 1966] 1942

The reassessment notice issued under section 148 of the Act dated September 28, 2018, and the registration date was September 29, 2018. This implied that the assessment proceedings for earlier years were pending before the Assessing Officer as of the date of such registration. Hence, the provisions of sections 11 and 12 of the Act would apply to income held by the assessee-trust of any assessment year preceding the assessment year in which the registration was granted. According to the Central Board of Direct Taxes Circular No. 1 of 2015 (2015) 371 ITR 22(St) that the reassessment proceeding is

bad in law as it was contrary to the proviso to section 12A(2) of the Act and hence was quashed. (AY. 2012-13 to 2017-18)
Maharashtra Nursing Council v. Dy. CIT (E) (2024)116 ITR 31 (SN)(Mum)(Trib)

1943 **S. 148 : Reassessment-Notice issued in the name of dead person-Reassessment is bad in law and quashed. [S. 147, 159(2)(b), 159(3)]**
The court held that the notice under section 148 had been issued in the name of a dead person and the legal heir of the deceased assessee had not been impleaded and no notice under section 148 had been issued in the name of any legal heir of the deceased assessee. The reassessment had not been framed in the name of any specific person against whom it could be enforced. Thus the reassessment order is quashed. (AY. 2012-13)
Estate of Arjun Das Agarwal v. ITO (2024)115 ITR 467 (Kol)(Trib)

1944 **S. 148 : Reassessment –Notice-Additional ground-Legal issue-Time for issue notice under Section 143(2) against original return had not lapsed-Reassessment notice is bad in law-Limitation-Time-limit to be reckoned from date of return whether filed under Section 139(1) or 139(5) or in response to notice under section 142(1). [S. 139(1), 139(2), 139(5), 142(1), 143(2), 147]**
The court held that the issue raised by the assessee in the additional grounds was a legal issue challenging the validity of notice under section 148 of the Act even when the Assessing Officer had the time to issue notice under section 143(2) for conducting regular assessment. The additional grounds were directly connected with the validity of reassessment proceedings and no new facts needed to be investigated for adjudicating them. The additional grounds raised by the assessee in both the years under consideration was admitted. The assessee had not filed its original return under section 139 of the Act. However on receipt of the notice under section 142(1), the assessee filed the return of income on December 2, 2016 for both years. Under such circumstances, according to the law during the relevant years, the Assessing Officer had six months from the end of the financial year in which such return was filed to issue notice under section 143(2) of the Act. In this case he had time to issue notice under section 143(2) till September 30, 2017 to conduct regular assessment under section 143(3) of the Act. However, notice under section 148 of the Act was issued to the assessee for both assessment years on June 22, 2017. As on the date of the issuance of notice under section 148 of the Act the original assessment proceedings were pending as the time period for issuance of notice under section 143(2) had not expired. The court held that Section 142(1) and section 148 of the Act cannot operate simultaneously. There was no need for the Assessing Officer to issue notice under section 148 as there was time to issue notice under section 143(2) of the Act for conducting the assessment under section 143(3) of the Act. Accordingly, the notice under section 148 by the Assessing Officer for both the assessment years is quashed. (AY. 2014-15, 2015-16)
Ubmc Trust Association v. ITO (E) (2024)111 ITR 66 (SN)(Bang)(Trib)

S. 148 : Reassessment –Notice-Beyond human probabilities-Factual mistakes and errors in dates mentioned on notice-Assessment order is void ab-initio-Notice issued affixture through inspector without presence of two independent witnesses of neighborhood as per procedure laid down in section 282 read with rules 12, 17 and rule 19 of Order V of Civil Procedure Code, 1908, such service of notice is invalid. [S. 147, 282, rules 12, 17 and rule 19 of Order V of Code of Civil Procedure, 1908] 1945

The Court held that the notice under section 148, dated 27-03-2017, was purportedly issued on 15-03-2017 and served on the assessee on 20-03-2017, a sequence that defies human probabilities. Such factual inconsistencies and errors in the dates mentioned in the notice and the assessment order undermined the very foundation of the assessment, rendering it erroneous and void ab initio. Furthermore, the Assessing Officer served the reopening notice by affixture through an inspector, but failed to comply with the prescribed procedure under section 282, read with Rules 12 and 17 and Rule 19 of Order V of the Code of Civil Procedure, 1908, as no independent witnesses from the neighbourhood were present, nor was there evidence of any local person being involved in identifying the assessee's place of business prior to affixture. Consequently, the service of notice under section 148 by way of affixture was held to be invalid and not in accordance with law.. Relied on *CIT v. Ramendra Nath Ghoah (1971) 82 ITR 888* (SC (AY. 2010-11)

Mandeep Malli. v. ACIT (2024) 207 ITD 157/ 231 TTJ 960 / 242 DTR 121 (Amritsar) (Trib.)

S. 148 : Reassessment –Notice-Notice issued by non-jurisdictional Assessing Officer-Notice and Assessment order is quashed. [S. 147] 1946

The Assessee is the resident of Gurgaon and the Assessing Officer issued reopening notice in name of the assessee. Subsequently, case of assessee was transferred to Assessing Officer, Ward 4(1), Gurgaon who completed reassessment. The Assessee contended that since Assessing Officer, Ward 69(1), Delhi who issued reopening notice did not have jurisdiction to issue reopening notice, reassessment completed by Assessing Officer, Ward 4(1), Gurgaon was bad in law. On appeal the Tribunal held that since Assessing Officer, Ward 69(1), Delhi who issued reopening notice had no jurisdiction over assessee, assumption of jurisdiction by him for reopening assessment by issue of notice under section 148 was bad in law. (AY. 2011-12)

Saroj Sangwan v. ITO (2024) 207 ITD 165 (Delhi) (Trib.)

S. 148 : Reassessment –Notice-Non-service of notice-E mail is sent to wrong address-Notice was not served within period of limitation-Notice in e-filing portal had to be considered as date of issuance of notice - Reassessment is bad in law. [S. 115BBA, 144, 147] 1947

The Assessing Officer issued a notice under section 148 via email through the ITBA portal just one day prior to the expiry of the limitation period; however, the email was sent to an account not belonging to the assessee and was consequently bounced. As it was established that the notice under section 148 was never served on the assessee within the statutory limitation period, the assessment order passed without proper service of notice was declared invalid and was quashed. Furthermore, since the assessee was granted access to the ITBA portal only in March 2022, he could not have viewed

the notice issued on 30-03-2021 prior to that date. In such circumstances, the date on which the assessee actually viewed the notice on the e-filing portal must be regarded as the date of issuance of the notice. (AY. 2013-14)
Brett Lee. v. ACIT, IT (2024) 207 ITD 303 /230 TTJ 124/238 DTR 305 (Delhi) (Trib.)

1948 **S. 148A: Reassessment-Conducting inquiry, providing opportunity before issue of notice-Grant of approval without application of mind-Benefits of giving opportunity of hearing after issue of initial notice under Section 148A(b)-Order passed under Section 148A(d) without giving requested opportunity of hearing-Approval by Principal Commissioner without application of mind-Order and consequent notice is set aside by High Court-SLP of Revenue is dismissed as the reasons assigned for seeking condonation of delay of 201 days in filing the SLP are neither satisfactory nor sufficient in law to condone the same. [S. 147, 148, 148(A)(b), 148A(d), 149(1((b), 151, Art. 136]**
The AO issued a notice under Section 148A(b), passed an order under Section 148A(d), and issued a notice under Section 148. The assessee filed a writ petition contending that there was a total non-application of mind in granting approval under Section 151. Further, the AO refused to grant a personal hearing to the assessee, citing that it was premature and would be provided during the subsequent proceedings. The Court observed that the notice under Section 148A(b) was issued for AY 2019-20, which falls within the 3-year time limit. However, the application submitted for approval and sanction under Section 151 incorrectly stated that the 'Time limit for current proceedings covered under section 149(1)(b)-for more than 3 years but not more than 10 years'. Consequently, the Court held that the application for approval, the recommendation, and the subsequent grant of approval were all mechanically made by the officers without proper application of mind. The Hon'ble Supreme Court noted a delay of 201 days in filing the Special Leave Petition, which did not contain any satisfactory reasons for the condonation of the delay. Hence, the Hon'ble Supreme Court dismissed the SLP on the ground that the reasons assigned for seeking condonation of delay of 201 days in filing the SLP are neither satisfactory nor sufficient in law to condone the same. (AY 2019-20)
ITO v. Nikhil Chandrakant Dharia (2024) 469 ITR 315 / 302 Taxman 89 (SC)
Editorial: Nikhil Chandrakant Dharia v. Income-tax Officer [2024] 168 taxmann.com 40 /469 ITR 252 (Bom)(HC)

1949 **S. 148A : Reassessment-Conducting inquiry, providing opportunity before issue of notice-Time limit for notice-Notice issued for assessment year 2013-14, under old regime after expiry of six years-SLP is disposed of in terms of judgment of Supreme Court in Union of India v. Rajeev Bansal [2024] 167 taxmann.com 70 (SC). [[S. 147, 148, 148A(b), 148A(d), 149, Taxation and other Laws (Relaxation and Amendment of Certain Provisions) Act, 2020, S. 3, Art. 136]**
Assessee filed writ petition challenging reopening notice along with order passed under section 148A(d) on ground that the same were bad in law and without jurisdiction. High Court held that reassessment notice issued for assessment year 2013-14, under old regime after expiry of six years limitation period were barred by limitation. SLP

of Revenue is disposed of in terms of judgment of Supreme Court in *Union of India v. Rajeev Bansal [2024] 167 taxmann.com 70 (SC).* (AY. 2013-14)
Asstt. CIT v. Deekay Pine Board (P.) Ltd. (2024) 301 Taxman 552 (SC)
Editorial : Deekay Pine Board (P.) Ltd v. ACIT(2024) 167 taxmann.com 731 (Guj)(HC)

S. 148A: Reassessment-Limitation-Conducting inquiry, providing opportunity before issue of notice-TOLA overrides Income-tax Act to extent of relaxing time limit for issue of reassessment notice which fell for completion from 20-3-2020 to 31-3-2021, till 30-6-2021-Section 3(1) of TOLA relaxes time limit for compliance with actions that fall for completion from 20 March 2020 to 31 March 2021 and TOLA will accordingly extend time limit for grant of sanction by authority specified under section 151-Entire time allowed to assessee to respond to show cause notice has to be excluded for computing period of limitation and thus, period from date of issuance of deemed notices till supply of relevant information and material by Assessing Officers to assessees in terms of directions issued by this Court in UOI v. Ashish Agarwal (2022) 286 Taxman 183/ 444 ITR 1 (SC) has to be excluded from computation of period of limitation-In case of section 151 of new regime if time limit of three years from end of an assessment year falls between 20 March 2020 and 31 March 2021, then specified authority under section 151(i) has an extended time till 30 June 2021 to grant approval-In case of section 151 of old regime, if time limit of four years from end of an assessment year falls between 20 March 2020 and 31 March 2021, then specified authority under section 151(2) has time till 31 March 2021 to grant approval. [S. 148, 149(1)(b), 151, Taxation and Other Laws (Relaxation and Amendment of Certain Provisions) Act, 2020, S. 3(1)] 1950

The notifications dated 31-3-2021 and 27-4-2021 issued by the Central Government under section 3(1) of TOLA contained an explanation declaring that the provisions under the old regime shall apply to the reassessment proceedings initiated under them. Thus, the notifications directed the assessing officers to apply the provisions of the old regime for reassessment notices issued after 1-4-2021. The assessing officers accordingly issued reassessment notices between 1-4-2021 and 30-6-2021 by relying on the provisions under section 148 of the old regime. These reassessment notices were challenged by the assessees before various High Courts. The High Courts allowed the writ petitions and quashed all the reassessment notices issued between 1-4-2021 and 30-6-2021 under the old regime on the ground that: (i) Sections 147 to 151 stood substituted by Finance Act, 2021 from 1 April 2021; (ii) In the absence of any saving clause, the Revenue could initiate reassessment proceedings after 1-4-2021 only in accordance with the provisions of the new regime since they were remedial, beneficial, and meant to protect the rights and interests of the assessees; and (iii) the Central Government could not exercise its delegated authority to re-activate the pre-existing law. *UOI v. Ashish Agarwal (2022) 286 Taxman 183/ 444 ITR 1 (SC)* held that it was in complete agreement with the view taken by various High Courts in holding' that 'the benefit of the new provisions shall be made available even in respect of the proceedings relating to past assessment years, provided Section 148 notice has been issued on or after 1-4-2021. However, the Court observed that the Revenue issued the reassessment notices under a bona fide belief that the amendments may not yet have been enforced. The Supreme Court exercised

its discretionary jurisdiction under article 142 in order to balance the interests of the Revenue and the assessees and directed that the reassessment notices issued under the old regime shall be deemed to have been issued under Section 148A(b) of the new regime. On 11-5-2022, the Central Board of Direct Taxes issued an Instruction for the implementation of the decision Ashish Agarwal (supra). The Instruction "clarified" that Ashish Agarwal (supra) will apply to all cases where extended reassessment notices have been issued [...] irrespective of the fact whether such notices have been challenged or not. Paragraph 6. 1 of the Instruction stated that the reassessment notices will "travel back in time to their original date when such notices were to be issued and then new section 149 of the Act is to be applied at that point. Thus, the Instruction is based on the presumption that the notices issued under Section 148 of the new regime will travel back in time to their original dates, that is, the date when the Section 148 notice under the old regime was issued. Paragraph 6. 2 of the Instruction elaborated on the mechanism for issuing notices under section 148 of the new regime. The assessing officers accordingly considered the replies furnished by the assessees and passed orders under section 148A(d). Subsequently, notices under section 148 of the new regime were issued to the assessees by the assessing officers between July and September 2022 for the assessment years 2013-2014, 2014-2015, 2015-2016, 2016-2017, and 2017-2018. These notices were challenged before several High Courts. The High Courts declared the notices to be invalid on the ground that they were: (i) time-barred; and (ii) issued without the appropriate sanction of the specified authority. On the revenue's appeal to the Supreme Court, on analysing the various provisions the Court held ; as under ;

(a) After 1-4-2021, the Income-tax Act has to be read along with the substituted provisions;

(b) TOLA will continue to apply to the Income-tax Act after 1-4-2021 if any action or proceeding specified under the substituted provisions of the Income-tax Act falls for completion between 20-3-2020 and 31-3-2021;

(c) Section 3(1) of TOLA overrides section 149 only to the extent of relaxing the time-limit for issuance of a reassessment notice under section 148;

(d) TOLA will extend the time-limit for the grant of sanction by the authority specified under section 151. The test to determine whether TOLA will apply to section 151 of the new regime is this: if the time-limit of three years from the end of an assessment year falls between 20-3-2020 and 31-3-2021, then the specified authority under section 151(i) has extended time till 30-6-2021 to grant approval;

(e) In the case of section 151 of the old regime, the test is: if the time-limit of four years from the end of an assessment year falls between 20-3-2020 and 31-3-2021, then the specified authority under section 151(2) has extended time till 31-3-2021 to grant approval;

(f) The directions in Ashish Agarwal (supra) will extend to all the ninety thousand reassessment notices issued under the old regime during the period 1-4-2021 and 30-6-2021;

(g) The time during which the show cause notices were deemed to be stayed is from the date of issuance of the deemed notice between 1-4-2021 and 30-6-2021 till the supply of relevant information and material by the Assessing Officers to the assessees in terms of the directions issued by this Court in Ashish Agarwal (supra),

and the period of two weeks allowed to the assessees to respond to the show cause notices; and

(h) The Assessing Officers were required to issue the reassessment notice under section 148 of the new regime within the time-limit surviving under the Income-tax Act read with TOLA. All notices issued beyond the surviving period are time barred and liable to be set aside.

Brief summary is S. 149(1) of the new regime is not prospective. It also applies to past assessment years, the time-limit of four years is now reduced to three years for all situations. The Revenue can issue notices under S. 148 of the new regime only if three years or less have elapsed from the end of the relevant assessment year; the proviso to s. 149(1)(b) of the new regime stipulates that the Revenue can issue reassessment notices for past assessment years only if the time-limit survives according to s. 149(1)(b) of the old regime, that is, six years from the end of the relevant assessment year; and, all notices issued invoking the time-limit under s. 149(1)(b) of the old regime will have to be dropped if the income chargeable to tax which has escaped assessment is less than Rupees fifty lakhs.

UOI v. Rajeev Bansal (2024) 340 CTR 865 / 242 DTR 297 / 301 Taxman 238 / 469 ITR 46 (SC)

Editorial : Rajeev Bansal v UOI (2023) 453 ITR 153/ 147 taxmann.com 541/ 331 CTR 609/ 223 DTR 177 (All)(HC), Keenara Industries (P.) Ltd. v. ITO (2023) 147 taxxmann.com 585 453 ITR 51 (Guj)(HC) [2023], J M Financial and Investment Consultancy Services (P.) Ltd. v. Asstt. CIT [2023] 451 ITR 205 (Bom.); Siemens Financial Services (P.) Ltd. v. Dy. CIT (2023) 154 taxmann.com 159 / 457 ITR 51 (Guj)(HC), Geeta Agarwal Wife of Shri Navratan Agarwal v. ITO [2022] 456 ITR 103 (Raj.)(HC) Ambika Iron and Steel (P.) Ltd. v. Pr. CIT [2022] 452 ITR 285 (Orissa)(HC) Twylight Infrastructure (P.) Ltd. v. ITO (2023) 158 taxmann.com 378 (Delhi) (HC) and Ganesh Dass Khanna v. ITO (2023) 156 taxmann.com 417 /460 ITR 546 (Delhi)(HC) is set aside with observations.

S. 148A : Reassessment-Conducting inquiry, providing opportunity before issue of notice-Notice after three years-Failure to file the return of income-Gross receipt of sale consideration not income chargeable to tax-Notice and consequential orders are quashed-SLP of Revenue dismissed. [S. 2(24), 147, 148A(b), 148A(d), Art. 136] 1951

Order passed under section 148A(d) of the Act on the ground that the assessee having not filed a return of income for the assessment year 2016-17, the amount of Rs. 72,05,084 received by the assessee as a result of an export transaction was an asset which had escaped assessment. On writ allowing the petition the Court held that the Department had failed to understand the fundamental difference between sale consideration and income chargeable to tax. It had relied upon sections 2(24), 14, 28 and 44AD to emphasize the expression "income". Neither the notice under section 148A(b) nor the order under section 148A(d), nor the consequential notice under section 148 stated that the income alleged to have escaped assessment included land or buildings or shares or equities or loans or advances. The assessee had filed a reply to the notice under section 148A(b) wherein it had submitted that the amount of Rs. 72,05,084 was the gross receipt of sale consideration of 16 scooters which meant that

the amount of Rs. 72,05,084 was the total sale consideration receipt of the transaction in question, and not income chargeable to tax which would obviously be less than such amount. With the reply the assessee had also furnished the details of items sold and payment receipts, computation of total income and the computation of tax on total income and had submitted these to the Assessing Officer before the passing of the order under section 148A(b). There was nothing stated in the provisions of section 148, 148A or 149 which could prevent the assessee from taking advantage of these provisions merely because of his failure to file return of income. SLP of the Revenue dismissed. (AY. 2016-17)

PCCIT v Nitin Nema (2024)468 ITR 105/ 168 taxmann.com 531 (SC)

Editorial : Nitin Nema v. PCIT (2023) 458 ITR 690 /155 taxmann.com 276 / 334 CTR 545 (MP)(HC)

1952 **S. 148A: Reassessment-Conducting inquiry, providing opportunity before issue of notice-Information from Investigation Wing-Alternative remedy-Statutory appeal-Writ petition is dismissed-SLP of assessee dismissed. [S. 147, 148, 148A(b), 148A(d), Art. 136]**

The Assessing Officer, issued an initial notice under section 148A(b), passed an order under section 148A(d) and issued the consequential notice under section 148 for reassessment under section 147, based on the information received from the Investigation Wing. On a writ petition challenging the notice for reopening, on the grounds that it was illegal and without jurisdiction. Dismissing the petition the Court held that the assessee had the efficacious remedy of statutory appeal under section 246A of the Act and that the court refrained from making any observations on the merits of the matter. SLP of assessee dismissed. (AY. 2018-19)

Renu Singh v. PCIT (2024) 467 ITR 24 / 300 Taxman 89 (SC)

Editorial : Renu Singh v. PCIT (2024)467 ITR 17/ 161 taxmann.com 296 (Jharkhand) (HC)

1953 **S. 148A: Reassessment-Conducting inquiry, providing opportunity before issue of notice-Cash credits-Information from DDIT(Investigation)-Reassessment notice was quashed by High court-Delay of 399 days-SLP of Revenue dismissed delay was not sufficiently explained. [S. 68, 147, 148, 148A(b), 148A(d), Art. 136]**

An information was received from DDIT (Investigation) that certain material/document was recovered which showed that assessee had entered into certain financial transactions and made some potential cash borrowings from several parties. The Assessing Officer issued notice for reopening of the assessment. On writ High Court held that report was as vague as possible as it stated that possible financial transactions could be deduced and decoded from hard copies obtained from DDIT and there was "potential" cash borrowed from various lenders and "probable" names of group were mentioned and set out without any particulars and that said material was not made available to assessee so as to enable it to give an effective reply and that Assessing Officer did not independently apply its mind to information furnished by DDIT which he was required to do while exercising power to reopen assessment. High Court, on facts, held that notice for reopening of assessment was bad in law and set aside. SLP of

the Revenue is dismissed as the explanation given for condonation of delay of 399 days in filing SLP against order of High Court was not sufficient in law to condone delay.
PCIT v. Girdhar Gopal Dalmia (2024) 299 Taxman 362 / 464 ITR 393 (SC)
Editorial : Girdhar Gopal Dalmia v. UOI (2023) 150 taxmann.com 54/ 451 ITR 320 (Cal)(HC)

S. 148A: Reassessment-Conducting inquiry, providing opportunity before issue of notice-Issuing third notice and furnishing specific details of transaction which was subject matter of earlier notice-Failure to explain or substantiate genuineness of transaction in reply-Notice and order for issuance of reassessment notice is held to be valid by the High Court-SLP dismissed as not pressed. [S. 147, 148, 148A(d), Art. 136] 1954
Dismissing the petition the Court held that in the absence of any explanation for the transactions entered into with the entity in the relevant financial year having been offered by the assessee in her reply to the notice dated June 23, 2022, there was no error in the order passed by the Assessing Officer. When the assessee in her detailed reply on June 28, 2022 had elected not to explain or substantiate the transaction with the entity can not contend that she was denied an opportunity of hearing. The assessee's contention that the transaction was a loan transaction and it was repaid could be examined by the Assessing Officer in the assessment proceedings after examining the material furnished by the assessee. High Court held that there was no infirmity in the notice dated June 23, 2022 and the order passed under section 148A(d) by the Assessing Officer. SLP dismissed as not pressed. (AY. 2013-14)
Saroj Chandna v. ITO (2024) 298 Taxman 647 (SC)
Editorial : Saroj Chandna v. ITO (2022) 448 ITR 28 / 218 DTR 41/ 328 CTR 804/ (2023) 291 Taxman 233 (Delhi)(HC)

S. 148A: Reassessment-Conducting inquiry, providing opportunity before issue of notice-Charitable purpose-Registration-Reassessment proceedings for earlier years cannot be initiated on ground of non-registration- No action under section 147 could be taken for year 2015-16 - SLP of Revenue dismissed. [S. 11, 12, 12A(2), 147, 148, 148A(b), Art. 136] 1955
The High Court held that once the reply filed by the assessee pursuant to the notice had been rejected without examining the third proviso to section 12A(2) of the Income-tax Act, 1961, relegating the assessee to the alternative remedy would not be appropriate, and set aside the show-cause notice under section 148A(b), the consequent order under section 148A(d) and the notice under section 147 being contrary to the third proviso to section 12A(2). No action under section 147 could be taken for year 2015-16 the notice was set aside. SLP of Revenue is dismissed. (AY. 2015-16)
Asst. CIT (E) v. Prem Chand Markanda Sd College For Women (2024)460 ITR 495 /297 Taxman 64 (SC)
Editorial : Refer, Prem Chand Markanda Sd College for Women v. ACIT (E) (2023) 455 ITR 329/334 CTR 582 (P& H)(HC)

1956 **S. 148A: Reassessment-Conducting inquiry, providing opportunity before issue of notice-Right to cross examination-No specific request for cross examination and issue off summons-Reassessment is valid-Writ petition dismissed. [S. 144B, 147, 148, 148A(b), 148A(d), Art. 226]**

After passing of the assessment order the assessee filed a writ petition before the High Court on the ground that right to cross examination is not provided. High Court dismissed the petition on the ground that no specific request was made in the course of assessment proceedings for issue of summons and cross examination. Reassessment proceedings are valid.

Dinesh Khaitan v. UOI (2024) 163 taxmann.com 39 (Cal)(HC)

1957 **S. 148A: Reassessment-Conducting inquiry, providing opportunity before issue of notice-Purchase of property-Income from other sources-Order for issue of notice was not mentioned in the initial notice-Notice and order is quashed-Matter remanded. [S. 56(2)(viib), 147, 148, 148A(b), 148A(d), Art. 226]**

Assessing Officer issued a notice under section 148A(b) on basis of information gathered from Insight Portal calling upon assessee to show cause as to why a notice under section 148 should not be issued in respect of transactions related to purchase of two properties and another entry related to a TDS statement for certain amount. However, the Assessing Officer passed an order under section 148A(d) holding that there was difference between the amount of guideline value and sale consideration of properties purchased by assessee which was assessable under section 56(2)(vii)(b). On writ the Court held that the notice under section 148 had raised an issue which was not previously raised in show cause notice, it was necessary for Assessing Officer to issue a fresh show cause notice calling for an explanation with regard to all issues that warranted issuance of a notice under section 148. Accordingly the notice and consequential order is quashed. The matter is remanded back to the AO. (AY. 2016-17) (SJ)

Annam Rajasekher Bindu v. ITO (2024)471 ITR 328/158 taxmann.com 406 (Mad) (HC)

1958 **S. 148A: Reassessment-Conducting inquiry, providing opportunity before issue of notice-Notice issued without giving an opportunity of hearing heard-Notice and order is set aside. [S. 147, 148, 148A(b), 148A(d), Art. 226]**

Allowing the petition the Court held that the notice issued without giving an opportunity of hearing heard. The Court set aside the notice and order. The assessee is directed to file the reply in response to notice. (AY. 2018-19)

Shram Enterprises v. ACIT (2024)471 ITR 456 (Karn) (HC)

1959 **S. 148A: Reassessment-Conducting inquiry, providing opportunity before issue of notice-Notices issued u/s 148 on or after 1-4-2021 relating to assessment years 2013-14 and 2014-15-Time limit-Finance Act, 2021 which came in to effect from 1-4-2021-TOLA applied to pre-amended law as applicable till 31-3-2021-Notices and all subsequent proceedings are quashed-Interpretation of taxing statutes-Legislative intent. [S. 147, 148, Art. 226]**

On writ the Court held that since provisions of Taxation and Other Laws (Relaxation and Amendment of certain Provisions) Act, 2020 applied to pre-amended law as applicable till 31-3-2021 and erstwhile regime of section 148 (applicable up to 31-3-2021) had been

repealed by Parliament without any savings and exception clause and was substituted with an altogether new regime vide Finance Act, 2021 with effect from 1-4-2021, notices issued on or after 1-4-2021, relating to assessment years 2013-14 and 2014-15, under section 148 by converting/treating same as under newly inserted section 148A by Finance Act, 2021 which came into effect from 1-4-2021 and all subsequent proceedings on basis of notices are bad in law would not be sustainable in law and are quashed and all legal consequences will follow automatically. (AY. 2013-14, 2014-15) (SJ)

Arati Marketing (P.) Ltd. v. UOI (2024)470 ITR 453 / 159 taxmann.com 322 (Cal)(HC)

Editorial : Apex Court decision in the case of UOI v. Rajeev Bansal [2024] 469 ITR 46 (SC) altered position.

S. 148A : Reassessment-Conducting inquiry, providing opportunity before issue of notice-Limitation-Notice issued after six years-Limitation period expired on 31-3 2020-Limitation for reopening assessment for assessment year 2013-14 expired on 31-3-2020, notice issued in June 2021 in case of assessee was barred by limitation, hence, section 148 notice dated 28-7-2022 issued pursuant to *UOI v. Ashish Agarwal(2022) 286 Taxman 183/ 444 ITR 1 (SC)* is quashed and set aside as it was invalid, without jurisdiction and barred by limitation [S. 148, 148A(b),148A(d), 149, Taxation and Other Laws (Relaxation and Amendment of Certain Provisions) Act, 2020, S. 3, Art. 226] 1960

The petitioner challenged the notice dated July 28, 2022 under section 148 of the Act for reopening of the assessment for the Assessment year 2013-14. The petitioner contended that the order dated July 27, 2002 passed under section 148A(d) of the Act and CBDT Instruction No 1 of 2002 dated May 11, 2002 (2022) 444 ITR 43 (St), the said order and notice is bad in law and without jurisdiction. On writ allowing the petition the Court held that validity of a notice issued under section 148 must be judged on basis of law existing on date on which such notice is issued. Accordingly the notice under section 148 cannot be issued in order to reopen assessment of an assessee in a case where right to reopen assessment was already barred under pre-amended Act on date when new legislation came into force. Applicability of section 149 is to be seen qua notice under section 148 and not with respect to notice issued under section 148A(b) or order passed under section 148A(b), and thus a notice, which had become time barred prior to 1-4-2021 as per the then prevailing provisions, would not be revived by virtue of application of section 149(1)(b) effective from 1-4-2021. Therefore, where limitation under Act (erstwhile section 149) for reopening assessment for assessment year 2013-14 expired on 31-3-2020, notice issued in June 2021 in case of assessee was barred by limitation, hence, reassessment proceedings initiated pursuant to judgment in judgment in *UOI v. Ashish Agarwal(2022) 286 Taxman 183/ 444 ITR 1(SC)* is also be regarded as beyond time limit. On facts since limitation under erstwhile section 149 for reopening assessment for assessment year 2013-14 expired on 31-3-2020, therefore, CBDT Notification No. 20/2021 which covers only those cases where 31-3-2021 was end date would not apply to facts of present case and even relate back theory of revenue could not safeguard reassessment proceedings initiated after 1-4-2021. Therefore, section 148 notice dated 28-7-2022 issued pursuant to Judgment in Ashish Agarwal is quashed and set aside. (AY. 2013-14)

New India Assurance Company Ltd. v. ACIT (2024)470 ITR 399 /158 taxmann.com 367 (Bom) (HC)

1961 **S. 148A: Reassessment-Conducting inquiry, providing opportunity before issue of notice-Charitable or religious trust-Registration procedure-Alternative remedy-Writ petition is dismissed. [S. 12AA, 148A(b), 148A(d), 164, 246A, Art. 226]**
Registration of assessee under Section 12 AA was cancelled w. e. f. 1. 4. 2016 by CIT (E). Tribunal remanded the matter to CIT(E). but cancellation order had been set aside and on remand by Tribunal, registration of assessee had been restored. Notice under section 142 (1) was issued and an assessment order came to be passed holding that as exemption under Section 11 and 12 was denied, surplus income was taxable. The AO issued a notice under Section 148A(b) had been issued on ground that total receipts was to be treated as an income of assessee as per Section 164 since assessee was not registered under Section 12AA and consequential order had been passed under Section 148. On writ the Court held that since revenue was possessed of certain information suggested that income chargeable to tax had escaped assessment order under Section 148A(d) and issue of notice under Section 148 is up held. (AY. 2017-18)
Smt. Kulwanti Bhatia Charitable Trust Society v. PCIT (2023) 155 taxmann.com 653 (2024) 470 ITR 531 (All) (HC)

1962 **S. 148A: Reassessment-Conducting inquiry, providing opportunity before issue of notice-Accommodation entries alleged Mr. Rakesh Garg-No dealings with alleged accommodation entry provider-Reassessment notice issued earlier was dropped-Issue of notice under amended provision on same issue is not valid. [S. 147, 148, 148A(b), 148A(d), Art. 226]**
Allowing the petition the Court held that the assessee had taken an emphatic stand that the bank accounts adverted to by the Assessing Officer did not belong to him. The assessee had furnished the statement of accounts of the two banks which were maintained by him. However without any actionable material, the Assessing Officer had decided to reopen, in a sense, a closed assessment which had reached culmination via order dated March 22, 2022, at least at the point in time when notice under section 148A(b) of the Act was issued. Accordingly the issue of notice under amended provision on same issue is not valid. Order and notice is quashed. (AY. 2015-16)
Arun Khanna v. ITO (2024)470 ITR 791 (Delhi) (HC)

1963 **S. 148A : Reassessment-Conducting inquiry, providing opportunity before issue of notice-Notice mentioning for which the notice issued-Transactions recorded of other financial year-Notice valid. [S. 147, 148, 148A(b), 148A(d), Art. 226]**
Dismissing the petition the Court held that the assessee had made out a baseless and frivolous case that the initial notice under section 148A(b), the order under section 148A(d) and the consequent notice under section 148 related to three assessment years 2016-17, 2017-18 and 2018-19 which was contrary to record. The initial notice under section 148A(b) it had been clearly described that the notice had been issued relating to the financial year 2015-16 relevant to the assessment year 2016-17. In the annexure to the notice under section 148A(b) incidentally the Assessing Officer might have recorded some transactions relating to some other financial years, but, considering the annexure as a whole, the initial notice under section 148A(b) had been issued for the assessment

year 2016-17 only. Accordingly the initial notice under section 148A(b), the order under section 148A(d) and the notice under section 148 were valid. (AY. 2016-17) (SJ)
Champa Impex Pvt. Ltd. v. UOI (2024)470 ITR 689 (Cal)(HC)

S. 148A: Reassessment-Conducting inquiry, providing opportunity before issue of notice-Principle of natural justice –Cryptic notice--Information-Order was passed without considering the objections filed by the assessee-The order violative of the mandatory requirements of section 148A-The assumption of jurisdiction under section 147 was perverse and unsustainable-On the facts the matter did not warrant remand-The orders under section 148A(d) and the notices issued under section 148 were quashed and set aside. [S. 2(42A) 47(vid), 56(2)(x)(c), 147, 148, 148A(b), 148A(d), Art. 14, 226] 1964

The reassessment notice and order passed under section 148A(d) of the Act is challenged before the Court on various grounds ; Allowing the petition the Court held that the validity of the orders passed by statutory authorities has to be adjudged on the basis of the reasons contained in the contents of these orders Such reasons cannot be supplemented by way of affidavit or otherwise. The order passed under section 148A(d) cannot transcend the scope of the proposal notice under section 148A(b) inasmuch as such a notice is the foundation on the basis of which such an order can be passed, and not otherwise That is how the statutory scheme is devised. Definitive conclusions as to grounds that are not indicated in the proposal notice cannot be said to be in line with the scheme and purpose of section 148A. The requirement to act reasonably being in-built into the amended provision, an act in variance with it was unsustainable. There fore, the Assessing Officer should have information as defined in Explanation 1 to section 148 that suggested escapement of income and only thereafter, could he have invoked the provisions of section. On facts non-consideration of the reply relating to section 56 and section 47 would also make the order violative of the mandatory requirements of section 148A. The assumption of jurisdiction under section 147 was perverse and unsustainable. The matter did not warrant remand. The orders under section 148A(d) and the notices issued under section 148 were quashed. (SJ) (AY. 2018-19)
Vasanthi Ramdas Pai (Smt.) v. ITO (2024)470 ITR 536 (Karn) (HC)
Dr. Ramdas Mahaava Pai v. ITO (2024)470 ITR 536 (Karn) (HC)

S. 148A: Reassessment-Conducting inquiry, providing opportunity before issue of notice-Principle of natural justice-Sufficient opportunity to be heard is not given-Order is not valid [S. 147, 148, 148A(b), 148A(d), Art. 226] 1965

Held, that order is passed without considering the reply of the assessee and non application of mind. Notice and order disposing the objection is quashed and set aside (AY. 2015-16)(SJ)
D. R. Jayakothandaraman v. Government of India (2024)469 ITR 557 / 148 taxmann.com 21 (Mad)(HC)

1966 **S. 148A: Reassessment-Conducting inquiry, providing opportunity before issue of notice-Notices and orders not mentioning name and designation of concerned officers-Notices and orders are set aside. [S. 147, 148, 148A(b), 148A(d), 282A, Art. 226]**
Allowing the petitions the Court held that that the initial notices issued under section 148A(b) of the Income-tax Act, 1961 having been mailed after June 3, 2022, not only abrogated the mandate of the Central Board of Direct Taxes Instruction No. 1 of 2022 dated May 11, 2022 ([2022] 444 ITR (St.) 43), issued consequent to the judgment in *UOI v. ASHISH AGARWAL (2022) 444 ITR 1 (SC)* but also violated the provisions of section 282A since the name and designation of the concerned officers issuing the notices were not mentioned. The notices under section 148A(b) and the orders under section 148A(d) were unsustainable and therefore, to be set aside. The Department was granted liberty to proceed in accordance with law. (AY. 2013-14, 2014-15)
Jindal Exports and Imports Pvt. Ltd. v. Dy. CIT (2024)469 ITR 601 (Delhi)(HC)
Kiran Credits Pvt Ltd v. Dy. CIT (2024)469 ITR 601 (Delhi)(HC)

1967 **S. 148A: Reassessment-Conducting inquiry, providing opportunity before issue of notice-Limitation-Notice issued on 27-5-2022 under section 148A(b) was not in continuation of reopening notice under section 148 dated 30-6-2021-Reopening assessment for assessment year 2015-16, is in contravention of first proviso to section 149(1) and is barred by limitation. [S. 148, 148A(b), 148A(d), 149(1)(b), Art. 226]**
Notice under section 148 dt 30-6-2021 was issued to assessee based on information received pursuant to a survey carried out at premises. The assessee filed its return of income. No reassessment was processed. Pursuant to judgment of Supreme Court in *UOI v. Ashish Agarwal (2022) 286 Taxman 183/444 ITR 1 (SC)* revenue issued reassessment notice under section 148A to assessee dated 27-5-2022 and asserted that said notice was in continuation of original section 148 notice dated 30-6-2021. On writ the Court held that the assessee had not instituted any legal proceedings before any Court to assail notice dated 30-6-2021 and, thus, said notice remained unscathed and unimpacted and there arose no need for its revival and, thus, notice under section 148A(b) dated 27-5-2022 was not in continuation or substitution of original notice dated 30-6-2021. Therefore, notice issued on 27-5-2022 for reopening assessment for 2015-16 was in contravention of first proviso to section 149(1) and was barred by limitation. (AY. 2015-16)
Genpact India (P) Ltd. v. ACIT (2024) 341 CTR 30 /242 DTR 267 / 301 Taxman 126 / (2025) 474 ITR 48 (Delhi)(HC)

1968 **S. 148A: Reassessment-Conducting inquiry, providing opportunity before issue of notice-Notice issued for assessment year 2013-14, under old regime after expiry of six years-limitation period were barred by limitation. [S. 147, 148, 148A(b), 148A(d), 149, Taxation and other Laws (Relaxation and Amendment of Certain Provisions) Act, 2020, S. 3, Art. 226]**
Assessee filed writ petition challenging the reopening notice along with order passed under section 148A(d) on ground that the same were bad in law and without jurisdiction. Following the ratio in *Keenara Industries (P.) Ltd. v. ITO (2023) 147 taxmann.com 585/ 453 ITR 51 (Guj)(HC) [2023]* court held that reassessment notice issued for

assessment year 2013-14, under old regime after expiry of six years limitation period were barred by limitation. Accordingly notice under section 148 and order under section 148A(d) were quashed, (AY. 2013-14)
Deekay Pine Board (P.) Ltd v. ACIT(2024) 167 taxmann.com 731 (Guj)(HC)
Editorial : SLP is disposed of in terms of judgment of Supreme Court in UOI v. Rajeev Bansal [2024] 167 taxmann.com 70 (SC) Asstt. CIT v. Deekay Pine Board (P.) Ltd. (2024) 301 Taxman 552 (SC)

S. 148A: Reassessment-Conducting inquiry, providing opportunity before issue of notice-Income from other sources-Gift of property from uncle-Nephew-Relative-Explanation (e) to proviso to section 56(2)(vii) provides that a relative would also include a brother or sister of either of parents of individual-Word 'nephew' has not been mentioned cannot be a reason for proceeding on basis that uncle or nephew are not relatives within meaning of Explanation (e) to proviso to section 56(2)(vii)-Reassessment notice is quashed. [S. 56(2)(vii), 148, 148A(b) 148Ad), 149(1)(b), Art. 226] 1969
On the basis of information was received that a property was gifted to the assessee by his uncle, namely, Harish Kumar who was brother of father of the assessee. According to the Assessing Officer, a nephew was not a relative within a meaning of explanation (e) to proviso to section 56(2)(vii), the said gift would be taxable in the hands of the assessee done. On the basis of same, a reopening notice was issued upon the assessee. On writ the Court held that from the plain language of Explanation (e) to proviso to section 56(2)(vii) that a relative would also include a brother or sister of either of the parents of the individual. In this case, the donor is the brother of the petitioner''s father and therefore, is covered under the said clause. The fact that the word ''nephew'' has not been mentioned cannot be a reason for proceeding on the basis that uncle or nephew are not relatives within the meaning of Explanation (e) to proviso to section 56(2)(vii). Notice and order is set aside. (AY. 2018-19)
Sumeet Kawatra v. ITO (2024) 301 Taxman 488 /341 CTR 697 / 243 DTR 257 (Delhi)(HC)

S. 148A: Reassessment-Conducting inquiry, providing opportunity before issue of notice-Remuneration from hospital –Salary-Professional income-Return filed using form ITR 3-Claimed benefit under section 44ADA-Reassessment notice for failure to deduct tax at source under section 192-Reassessment notice and order is quashed. [S. 44ADA, 147, 148, 148A(b), 148A(d) 192, 194J, Art. 226] 1970
Allowing the petition the Court held that where a medical professional, provided services to several hospitals and received remuneration for services rendered to these hospitals on monthly basis. The tax was deducted under section 194J of the Act and the assessee claimed the benefit of section 44ADA of the Act. The reassessment notice issued on the ground that tax should have been deducted under section 192 of the Act. The notice and order is quashed. (AY. 2018-19)
Sankarnaryanasamy Selvanarayanan v. ITO (2024) 164 taxmann.com 169(Mad)(HC)

1971 **S. 148A: Reassessment-Conducting inquiry, providing opportunity before issue of notice-Notice was sent to an Email ID no longer in use-Notice and consequential proceedings are quashed-Matter remanded to Assessing Officer for proper issue of initial notice [S. 148A(d), Art. 226]**

The Petitioner challenged the order and the preceding re-opening notice on the ground that the same was transmitted to an Email ID which was no longer in existence. Thus, the Hon'ble Madras High Court remanded the matter back to the file of the AO to pass a fresh order in terms of section 148A (d) of the Act within 12 months from the date of receipt of the instant order. Matter remanded to Assessing Officer for proper issue of initial notice. (AY. 2015-16)

Shri Renga Fabricators Pvt. Ltd. v. NFAC [2024] 469 ITR 25 (Mad)(HC)

1972 **S. 148A: Reassessment-Conducting inquiry, providing opportunity before issue of notice-Cash credits-Principle of natural justice-Order is set aside with the direction to pass orders in accordance with law, after affording reasonable opportunity of personal hearing to assessee. [S. 68, 148, 148(A)(b), 148A(d), Art. 226]**

A notice under section 148A(b) was issued upon assessee on ground that there were unexplained credit to account of assessee to an extent of Rs. 40.25 lakhs and that assessee had not filed return of income tax. In response to above notice, assessee submitted that said amount was received from a family friend who was working abroad. Assessing Officer, passed an order under section 148A(d) on ground that there were unexplained credit to account of assessee to an extent of Rs. 40.25 lakhs. On writ the Court held that since assessee requested for an opportunity to submit his objection in person which was not considered by Assessing Officer, impugned order and notices issued under sections 148A(b) and 148 were to be set aside directing Assessing Officer to pass orders in accordance with law, after affording reasonable opportunity of personal hearing to assessee. (AY. 2020-21)(SJ)

Rajam Selvi v. ITO (2024) 301 Taxman 455 (Mad.) (HC)

1973 **S. 148A: Reassessment-Conducting inquiry, providing opportunity before issue of notice-Notice issued by jurisdictional AO and not as per S. 151A-Section 144B cannot be viewed as exclusive basis for all assessment and reassessment procedures and Jurisdictional Assessing Officer (JAO) cannot be completely deprived of power to assess or reassess merely because section 144B and Faceless Reassessment Scheme 2022 have been introduced-Interpretation Of Statutes-Legislative intent-Principles of beneficial construction. [S. 144B, 148, 148A(b), 148A(d), 151A, Art. 226]**

Notice for reassessment is issued by Jurisdictional Assessing Officer. On writ the Court dismissing the petition the Court held that Section 144B is primarily procedural and is principally concerned with prescribing manner in which a faceless assessment may be conducted as opposed to constituting a source of power to assess or reassess in itself. Section 144B cannot be viewed as exclusive basis for all assessment and reassessment procedures. Faceless assessment scheme centralizes processes under Faceless Assessing Officer (FAO) to reduce direct interaction, however, this structure does not diminish JAO's authority, therefore, JAO's powers should be understood as integral and not in conflict with faceless assessment. Accordingly Jurisdictional Assessing Officer (JAO)

cannot be completely deprived of power to assess or reassess merely because section 144B and Faceless Reassessment Scheme 2022 have been introduced. Reassessment notice is held to be valid. *Hexaware Technologies Ltd. v. Asstt. CIT (2024) 162 taxxmann.com 225 / 464 ITR 430 (Bom)(HC) distinguished., Talati and Talati LLP v. Asstt. CIT (2024) 301 Taxman 321 (Guj) (HC),* followed. (AY. 2014-15)
T. K. S. Builders (P) Ltd. v. ITO (2024) 167 taxmann.com 759/ 469 ITR 657 / 341 CTR 465 / 243 DTR 305 / 8 NYPCTR 1426 (Delhi)(HC)

S. 148A: Reassessment-Conducting inquiry, providing opportunity before issue of notice-Non application of mind-Reply filed-Face less assessment-Notice issued by Jurisdictional Assessing Officer-Notice and order disposing the objection is quashed. [S. 133(6), 148, 148(ab) 148A(d). 151A Art. 226] 1974
The assessee is served with a notice under s. 133(6) and reply is filed, the reply was ignored stating that the same has not been filed. On writ the Court held that where the information may not have been received in the electronic mechanism system which is also prone to errors, once it has come on record that reply had actually been filed, it would be wholly unjustified to allow the Revenue to make the assessee face the cumbersome proceedings under s. 148. Having proceeded on a presumption that reply not having been filed and the amount having escaped from income-tax assessed, the Court is satisfied that the said amount was already recorded and included in the ITR for the asst. yr. 2020-21 and the same was duly processed by the AO and it was offered for tax as part of business turnover. The impugned notice under s. 148 in the present case has been thus issued without application of mind and stands vitiated on that count. The proceedings initiated, therefore, are not sustainable in law. (AY-2020-21)
Vishal Garg v. ACIT (2024) 167 taxmann.com 483 /341 CTR 563/ 243 DTR 41 / 8 NYPCTR 1254 (P&H) (HC)

S. 148A: Reassessment-Conducting inquiry, providing opportunity before issue of notice-Notice is issued by Jurisdictional Assessing Officer and not under faceless mechanism-Notice and order is quashed. [S. 148, 148A(b) 148A(d), 151A, Art. 226] 1975
Assessee invested an amount in compulsory convertible preference shares (CCPS) issued by an Indian company. JAO issued notices under sections 148A and 148 seeking to reassess assessee's income in regard to said investment. On writ the Court held that since notice was issued by Jurisdictional Assessing Officer and not under faceless mechanism as per requirement of section 151A, same is quashed and set aside. (AY. 2019-20)
CapitalG LP v ACIT (2024) 341 CTR 1024 / 165 taxmann.com 718 (Bom)(HC)

S. 148A: Reassessment-Conducting inquiry, providing opportunity before issue of notice-Non application of mind-Net income from the buy and sell transactions amounts to only Rs. 77,280-Reassessment notice and order disposing the objection is quashed. [S. 148A(b), 148A(d), Art. 226] 1976
Held that even if there was no reply filed by assessee the onus is on Department to justify the reopening. If one considers the material relied upon by respondents to reopen, there are two buy and two sell. What has been brought has been sold or what

has been sold only has been brought. It is well-settled that only the net income from the buy and sell transactions can be brought to tax in assessee's hand and not the entire sum as done in this case. There is no attempt to even apply their mind as to how, when there are contra entries of buy and sell, both amounts could be added to say escapement of income. Therefore, in this case, considering the figures as given in the reasons for reopening, net income from the buy and sell transactions amounts to only Rs. 77,280 which can be brought to tax in assessee's hand and not the entire amount of Rs. 98,04,340. Assessee has stated that this net income also is less than the maximum amount which is not chargeable to income-tax for the assessment year in question and accordingly no income chargeable to tax has escaped assessment in assessee's hand. Reopening is not therefore sustainable. (AY. 2014-15)
Ram Nebhnani (HUF) v. ITO (2024) 341 CTR 664 / 8 NYPCTR 1660 (Bom)(HC)

1977 **S. 148A: Reassessment-Conducting inquiry, providing opportunity before issue of notice-Notice issued by JAO is in contravention of faceless mechanism provided under section 151A-is bad in law. [S. 148, 148A(b), 148A(d), 151A, Art. 226]**
Reassessment notice issued under sections 148 and 148A by Jurisdictional Assessing Officer (JAO) instead of a Faceless Assessing Officer (FAO) is in contravention of section 151A and faceless mechanism introduced by Central Government vide Notification dated 29 March 2022 and therefore the said notices are invalid. (AY. 2020-21)
Sahib Singh Agencies (Bombay) (P.) Ltd. v. Dy. CIT (2024) 301 Taxman 150 (Bom.)(HC)

1978 **S. 148A: Reassessment-Conducting inquiry, providing opportunity before issue of notice-Notice issued by Jurisdictional Assessing Officer and not by Faceless Assessing Officer-Notice and consequential orders are quashed. [S. 148, 148A(b), 148A(d), 151A(2), Art, 226]**
An order under section 148A(d) was passed in case of assessee and a further notice was issued under section 148 for reassessment. On writ the Court held that notice under section 148 were all issued by Jurisdictional Assessing Officer (JAO) and not by a Faceless Assessing Officer (FAO), as was required by provisions of section 151A. For a notice to be validly issued for reassessment under section 148, revenue would need to be compliant with section 151A. Since revenue had not complied with Scheme notified by Central Government pursuant to section 151A(2), order under section 148A(d) and further notice issued under section 148 by JAO and not by FAO were vitiated. (AY. 2013-14)
Seth Iron & Steel (P.) Ltd. v. ACIT (2024) 301 Taxman 414 (Bom.)(HC)

1979 **S. 148A: Reassessment-Conducting inquiry, providing opportunity before issue of notice-Notice issued by JAO is in contravention of faceless mechanism provided under section 151A-is bad in law. [S. 148, 148A(b), 148A(d), 151A(2), Art. 226]**
For the relevant assessment year, the jurisdictional AO issued notice u/s 148 of the Act, after passing the order u/s 148A(d) of the Act. On filing the Writ Petition, the Hon'ble Court observed that the scheme notified by the Central Government pursuant to Section 151A(2) of the Act vide Notification dtd. 29–03–2022 tabled in Parliament and is in the character of subordinate legislation, which govern the conduct of proceedings u/s 148A

as well as u/s 148 of the Act. Following the explicit declaration of law in *Hexaware Technologies Ltd. v. Asstt. CIT (2024) 162 taxmann.com 225 / 464 ITR 430 (Bom)(HC)* (AY. 2013-14)
Future Generali India Insurance Co. Ltd. v. ACIT (2024) 301 Taxman 189 (Bom)(HC)

S. 148A: Reassessment-Conducting inquiry, providing opportunity before issue of notice-Dissolution of firm-AO issued notice u/s 148A in the name of assessee firm on 09–02–2023 which was dissolved w.e.f. 31-03-2016-Notice u/s 148 and subsequent order u/s 148A (d) were to be quashed and set aside. [S. 148, 148A(b), 1488A(d), Art. 226] 1980
The petitioner was one of the partners in the partnership firm subsequently converted into proprietary firm of the petitioner. The firm had been dissolved w. e. f. 31-03-2016 and was not in operation from 01-04-2016. The AO issued notice u/s 148A(a) in the name of the dissolved the partnership form for the Asstt. Year: 2019-20, but the petitioner did not reply. The AO subsequently issued notice u/s 148A(b) on the basis of Annual Information received by the insight portal under the category "NMS Category" as per RMS CYCLE-2 revealing that the said firm has withdrawn certain amount from the bank. Without considering the contention of the petitioner, the AO proceeded to issue notice u/s 148 on dissolved firm and passed the order u/s 148A (d). On Writ, the Hon'ble Court observed the undisputed facts about the dissolution of the firm and the issuance of notice in the name of dissolved firm and held the notice u/s 148A(b) as well as the order u/s 148A(d) was to be quashed. Referred, *Pr. CIT v. Maruti Suzuki India Ltd. (2019) 265 Taxman 515/416 ITR 613 (SC)*(AY. 2019-20)
Nathalal Hemabhai Patel v. ITO (2024) 301 Taxman 302 (Guj)(HC)

S. 148A : Reassessment-Conducting inquiry, providing opportunity before issue of notice-Principle of natural justice-Given only two working days to comply the notice-Notice and order is quashed and set aside. [S. 148, 148A(b), 148A(d), Art. 226] 1981
The assessee has requested for fifteen days time to comply the notice m however only two working days time was granted and the order under section 148A(d) was passed and notice under section 148 of the Act is issued. On writ allowing the petition the Court held that assesseee is denied reasonable opportunity to appropriately respond to show cause and thus, impugned order passed under section 148A(d) as well as consequential notice issued under section 148 were to be set aside. (AY 2018-19)
Skipper Infrabuilders (P.) Ltd. v. UOI (2024] 163 taxmann.com 10 /471 ITR 406 (Cal) (HC)

S. 148A : Reassessment-Conducting inquiry, providing opportunity before issue of notice-Dead person-AO issued notice in the name of deceased assessee in spite of being informed by the petitioner (son of the deceased assessee) to the AO –Notice and subsequent order is quashed and set aside. [S. 148, 148A(b), 148A(d), 226] 1982
The first notice u/s 148 issued upon the assessee by the AO on 08–04–2021. The assessee expired on 10–05–2021. The son of the deceased assessee (petitioner) filed the ITR in response to the notice and also filed replies in compliance to the notice u/s 143(2) informing the AO about the death of the assessee. On the income tax portal, the particulars of the legal heirs were recorded. Even then, the AO issued subsequent notice u/s 142(1) in the name of the deceased assessee. On Writ by the petitioner, the

Hon'ble Court held that the requirement of issuing notice in the name of a right person and not to a dead person is not merely a procedural requirement but is a condition precedent to the impugned notice being validly law. The Court further observed that the reassessment action effectively commenced on the strength of notice u/s 148A(b) and subsequent notice u/s 148 dtd. 30–07–2022, that the petitioner had already informed the AO about the death of the assessee has also furnished the particulars of the legal heirs on the income tax portal, that it is impugnment upon the AO to have taken remedial measures by revising the notice in the name of the legal heirs and the participation of the petitioner cannot be regarded as waiver or submitting to the jurisdiction of the AO without objection. Held the notice u/s 148A(b) suffers from a fundamental jurisdictional error having been issued in the name of a dead person, the proceedings initiated consequent to such notice and the subsequent order u/s 148A(d) and the final notice u/s 148 cannot be sustained and are set aside. (AY. 2015-16)
Kinshuk Goel Legal Heir v. ACIT (2024) 301 Taxman 306/(2025) 473 ITR 323 (Delhi)(HC)

1983 **S. 148A: Reassessment-Conducting inquiry, providing opportunity before issue of notice-Reassessment was concluded on 26-3-2002-Reassessment proceedings on same set of facts is not sustainable. [S. 147, 148, 148A(b) 148A(d), Art. 226]**
For the Asstt. Year: 2014-15, the assessee filed the return of income, which was subjected to the reassessment proceedings through notice u/s 148 dtd. 31-03-2021. After considering the explanations and submissions with the necessary documents and the statement of accounts, the reassessment order u/s 147 was passed on 26-03-2022 accepting the submissions made by the assessee. After conclusion of the reassessment proceedings, the AO issued notice u/s 148A(b) on 31-05-2022 in accordance with the judgment of the Supreme Court in *UOI v. Ashish Agarwal (2022) 138 taxmann.com 64 / 286 Taxman 183 / 444 ITR 1 (SC)* followed by the order u/s 148A(d) and the notice u/s 148 on 20-07-2022. On writ, the Hon'ble Court held that the second round of reassessment proceeding reinitiated on the same set of reasons vide Show Cause Notice dtd. 31-05-2022 u/s 148A(b) of the Act cannot be sustained and accordingly, the order dtd. 20-07-2022 u/s 148A(d) as well consequential notice u/s 148 of the even date shall stand quashed. The Writ Petition is accordingly allowed. (AY. 2014-15)
Jaswant Singh Juneja v. ITO (2024) 301 Taxman 371 (Delhi)(HC)

1984 **S. 148A: Reassessment-Conducting inquiry, providing opportunity before issue of notice-Faceless assessment-Search and seizure-Notice for reopening u/s 148 issued by the Jurisdictional Assessing Officer (JAO)-Scheme of Faceless Assessment framed vide Notification dt. 29-03-2022-Not applied to cases of search and seizure u/s 132-Challenge of notice u/s 148 on the ground that it could have been issued only through automated allocation in faceless manner and not by JAO-Writ petition is dismissed. [S. 132, 148, 148A(b), 148A(d),151A, Art. 226]**
The assessee LLP running professional services / consultancy / advisory in field of chartered accountancy, filed the return of income u/s 139. For the relevant year, the JAO issued notice u/s 148 in physical mode. The JAO also provided the satisfaction note to the assessee, followed by notice u/s 142(1) issued by the Verification Unit of the Faceless Assessment Centre. The assessee challenged the reopening notice u/s

148 on the ground that the said notice had been issued in violation of section 151A which provides for Faceless Assessment of Income, as has been inserted by the TOLA, 2020 w. e. f. 01-11-2022. Court held that the notification dtd. 29-03-2022 along with the statutory provisions, it does not cover a case where notice u/s 148 issued by the JAO on the strength of the information received in the matter of search and seizure u/s 132 or requisitioned u/s 132A. Hence, the petitions of the assessee unsustainable. (AY. 2021-22)
Talati and Talati LLP v. ACIT (2024) 301 Taxman 321 /469 ITR 643 / (2025) 342 CTR 416 (Guj)(HC)

S. 148A: Reassessment-Conducting inquiry, providing opportunity before issue of notice-Non-resident-Term deposits out of remittances from Dubai-Assessing Officer Vijayanagram had jurisdiction over assessee, notice issued by Assessing Officer, Vapi is in valid-Reassessment notice and order disposing the objection is quashed. [S. 10(4)(ii), 148, 148A(b), 148A(d), Art. 226] 1985

Assessee an NRI made term deposit/fixed deposits out of remittances from Dubai. The Notice issued under section 148 to verify the source of said term deposit is bad in law as maturity of existing term deposits, interest on NRE account and inter se transfer of funds between various accounts were exempted under section 10(4)(ii) of the Act. Assessing Officer Vijayanagram had jurisdiction over assessee, notice issued by Assessing Officer, Vapi is in valid. Accordingly the reassessment notice and order disposing the objection is quashed. [(AY. 2017-18)
Anand Kumar Dugar v. ITO (2024) 301 Taxman 116 (Guj.)(HC)

S. 148A: Reassessment-Conducting inquiry, providing opportunity before issue of notice-Notice issued by JAO in defiance of section 144B is bad in law. [S. 144B(7), 144B(8), 148, 148A(b) 148A(d), Art. 226] 1986

Notice under section 148 issued by JAO without following faceless assessment process under section 144B is bad in law and without jurisdiction.
Bharatiya Spinners v. UOI (2024) 301 Taxman 82 (P&H)(HC)

S. 148A: Reassessment-Conducting inquiry, providing opportunity before issue of notice-Before passing order under S. 148A(d) the Officer ought to give a personal hearing if requested for by the assessee-Grant of approval by PCIT without application of mind to the form of approval-Order and notice liable to be set aside. [S. 148, 148A(b), 148A(d),149(1)(b), 151 Art. 226]. 1987

The Petitioner challenged the show cause notice under section 148A(b) of the Act, order under section 148A(d) of the Act and the notice under section 148 of the Act on the ground that there was total non-application of mind by the superior authorities in granting the approval before issuance of the impugned re-opening notice. The Hon'ble Bombay High Court accepted the submission of the Petitioner and observed that the application for approval, recommendation and the grant of approval have all been made by the officers mechanically and without application of mind. Further, on the issue of personal hearing not being granted, the Hon'ble Court observed that in every case, before

passing an order under section 148A(d) of the Act, the Respondents shall give a personal hearing if requested for by the Petitioner. Accordingly, the impugned notices/orders were quashed and set aside. (AY. 2019-20)
Nikhil Chandrakant Dharia v. ITO [2024] 469 ITR 262 /151 taxmann.com 117 (Bom) (HC)

1988 **S. 148A : Reassessment - Conducting inquiry, providing opportunity before issue of notice under section 148-decision of Hon'ble Supreme Court in the case of UOI v. Ashish Agarwal [2022] 444 ITR 1 (SC) does not mandate reopening of completed assessment. [S. 147, 148, 148A(b), 148A(d), Art. 226]**
In this case the Hon'ble High Court held that in the present case reassessment order was passed pursuant to the notice dated 31. 03. 2021 issued under section 148 of the Act. Subsequent notice issued under section 148A(b) leading to passing of order under section 148A(d) and notice under section 148 pursuant to judgment passed in *UOI v. Ashish Agarwal [2022] 444 ITR 1 (SC)* is invalid. The decision of Hon'ble Supreme Court in the case of Ashish Agarwal does not mandate completed assessment to be reopened. (AY. 2014-15)
Satish Chand Jain v. ACIT (2024) 301 Taxman 27 / (2025) 474 ITR 230 (Delhi)(HC)

1989 **S. 148A : Reassessment-Conducting inquiry, providing opportunity before issue of notice-Limitation-Assessee had not initiated any legal proceedings to assail the notice dated 30. 06. 2021 issued under section 148-Subsequent notice issued under section 148A(b) pursuant to decision of Hon'ble Supreme Court in UOI v Ashish Agarwal (2022) 286 Taxman 183/ 444 ITR 1 (SC) is barred by limitation. [S. 148, 148A(b) 148A(d) 149, Art. 226]**
Notice issued for assessment year 2015-16 on 27. 05. 2022 under section 148A(b) is not in continuation of reopening notice under section 148 dated 30. 6. 2021 as the assessee had not assailed the said notice before any court. Thus, the decision of Hon'ble Supreme Court in the case of *UOI v. Ashish Agarwal(2022) 286 Taxman 183/ 444 ITR 1 (SC)* is not applicable in the facts of the present case. Thus, the impugned notice issued under section 148 in pursuance to the notice dated 27.05.2022 under section 148A(b) is in contravention of first proviso to section 149(1) and thus, barred by limitation. (AY. 2015-16)
Genpat India (P.) Ltd. v. ACIT, OSD (2024) 301 Taxman 126 (Delhi)(HC)

1990 **S. 148A : Reassessment-Conducting inquiry, providing opportunity before issue of notice-Faceless assessment-Notice issue by jurisdictional AO and not by faceless AO-Bad in law hence quashed. [S. 148, 148A(b), 148A(d), 151A, Art. 226]**
The Hon'ble High Court held that the CBDT issued a notification dated 29. 03. 2022 introducing the faceless mechanism to give effect to the provisions of section 151A of the Act. The AO is required to adhere to provisions of section 151A read with notification for passing the order under section 148A (d) and to issue notice under section 148 of the Act. Non-compliance with the scheme notified by the Central Government under section 151A (2) by the AO renders the impugned notice issued under section 148 bad in law. (AY. 2019-20)
Macleods Pharmaceuticals Ltd. v. ACIT (2024) 301 Taxman 20 (Bom.)(HC)

S. 148A : Reassessment-Conducting inquiry, providing opportunity before issue of notice-Notice under section. 148A(b) is issued in the name of dead person-Notice and order is quashed-Even otherwise, since tax had already been deducted on salary income, as was evident from Form-16, reassessment action leading to demand of tax could not be initiated against assessee or even his legal representatives is not valid. [S. 15, 148, 148A(b), 1488A(d), 192, Form No 16, Art. 226] 1991

Petitioner, legal heir of assessee, informed Assessing Officer about death of her husband and regarding averments made in impugned notice, she submitted that salary income received by deceased assessee during year under consideration had already been subjected to TDS under section 192, and therefore, there was no income chargeable to tax which had escaped assessment. Assistant Commissioner, however, proceeded to pass an order under section 148A(d) as also issued notice under section 148. On writ allowing the petition the Court held that notices issued under sections 148A(b) and 148 in name of dead person were liable to be set-aside. Even otherwise, since tax had already been deducted on salary income, as was evident from Form-16, reassessment action leading to demand of tax could not be initiated against assessee or even his legal representatives. (AY. 2020-21)

Meenu Gupta v. Asstt. CIT (2024) 301 Taxman 421 (Delhi)(HC)

S. 148A: Reassessment-Conducting inquiry, providing opportunity before issue of notice-Interest on bonds/Debentures-Interest income received on NCDs is in nature of dividend-liable to be taxed in terms of section 115-O-Reassessment notice and order disposing the objection is quashed-DTAA-India-Luxemborg. [S. 9(1)(v), 115-O, 148, 148A(b), 148A(d), 194LD, Art. 11, Art. 226] 1992

Assessee, company incorporated in Luxemborg, subscribed to NCDs floated by GIPL, Indian company-Assessee offered interest income received from said NCDs to tax under section 194LD. Assessment orders were framed accepting income derived from aforesaid NCDs in terms of section 194LD-Thereafter, Assessing Officer issued notice under section 148A(b) on ground that interest income had not been appropriately offered to tax on account of mischaracterization of income. Thereafter, order under section 148A(d) was passed wherein principal allegation was that although funds were taken out in form of interest payments, they were in fact liable to be declared as dividend and subjected to DDT in terms of section 115-O. On writ the Court held that since assessee was merely recipient of interest income and it was thus, clearly not entity which had either declared or paid dividend, even if payment were to be assumed to be dividend, liability to pay tax thereon could have only been foisted upon company which had declared, distributed or paid same and in facts of present case it would have been GIPL. Therefore, order and consequential reopening notices are quashed. (AY. 2018-19)

Genpact Luxembourg S. A. R. L v. ACIT (2024) 300 Taxman 462 /(2025) 473 ITR 68 /343 CTR 485 (Delhi)(HC)

1993 **S. 148A : Reassessment-Conducting inquiry, providing opportunity before issue of notice-Jurisdiction-Notices issued by Jurisdictional Assessing Officer (JAO)-Re-assessment proceedings initiated without conducting faceless assessment as envisaged under section 144B –Contrary to provision of law-Notice and order is quashed. [S. 119, 120, 144B(7), 144B(8), 148, 148A(b), 148A(d), 151, Art. 226]**

Held that notices issued by Jurisdictional Assessing Officer (JAO) under section 148 and re-assessment proceedings initiated thereafter without conducting faceless assessment as envisaged under section 144B were contrary to provisions of law and is quashed. Court held that exercising powers contained under sections 119 and 120, authorities could not be allowed to usurp legal provisions to their own satisfaction and convenience causing hardship to assessee.

Sandeep Kumar Gupta v. UOI (2024) 300 Taxman 386 (P&H)(HC)

1994 **S. 148A : Reassessment-Conducting inquiry, providing opportunity before issue of notice-Jurisdiction-Notices issued by Jurisdictional Assessing Officer (JAO)-Re-assessment proceedings initiated without conducting faceless assessment as envisaged under section 144B –Contrary to provision of law-Interim stay is granted. [S. 119,120, 144B(7), 144B(8),,148, 148A(b), 148A(d), 151, Art. 226]**

The assessee filed an writ petition against reopening notice under section 148 issued upon the assessee by the Jurisdictional Assessing Officer (JAO). The Court held that prima-facie, it is viewed that the impugned notice issued under section 148 by the Assessing Officer, who is the Jurisdictional Officer, is wholly without jurisdiction having regard to section 151A, introduced in the Income Tax Act, 1961 with effect from 1-11-2020 and the Notification issued on 28-3-2022 thereunder, which specifically contemplates that there would be automated allocation system in accordance with risk management strategy formulated by the CBDT and it is not the case of the revenue that the Assessing Officer is an officer who has been so randomly allocated as per the Scheme. Interim stay is granted till next date of hearing. Notification No. 15/2022, dated 28-3-2022.

Govind Singh v. ITO (2024) 300 Taxman 216 (HP)(HC)

1995 **S. 148A: Reassessment-Conducting inquiry, providing opportunity before issue of notice-Charitable trust-Accumulation of income-Delay in filing Form No. 10 and Form No. 10B-The action for reassess is not founded on income liable to tax having escaped assessment-Notice and order disposing the objection is quashed. [S. 11(2), 11(5), 148A(b), 148A(d), Form No 10, 10B. Art. 226]**

On writ against the issue of reassessment notice under S. 148, the Court held that the circular No 7 of 2018 dt 20th December, 2018 acknowledged and took note of the grievances which were raised with respect to the non-functionality of the facility for digital submission of forms leading to a delayed e-filing Form 10. The CBDT also appears to have taken a sympathetic view bearing in mind the fact that the requirement of digital filing had come to introduced and become applicable for the first time in asst. yr. 2016-17. was in that backdrop that the CBDT had hoped that assessing authorities would approach the issue bearing in mind reasonable cause being established by individual assessees in case of a delayed digital submission of Form 10. The respondents allude to 3687 digital submissions of Form 10 in the month of October, 2016. The Court

has not been provided any further details with respect to how that number would be representative or proof of a broad or universal functionality of the filing portal when compared with the body of assesse seeking to accumulate income under S. 11(2) the said year saw an exponential increase in the number of tax filings and with the tot number being pegged at 28. 2 million. The number of 3687 thus clearly fails to inspire any confidence. Accordingly the Court held that the action for reassess is not founded on income liable to tax having escaped assessment-Notice and order disposing the objection is quashed. (AY. 2016-17)

Associated Chambers of Commerce & Industry of India v. DCIT (2024) 340 CTR 241 / 241 DTR 49 / 300 Taxman 410 /(2025) 473 ITR 696 (Delhi)(HC)

S. 148A : Reassessment – Faceless mechanism – Central/International Taxation – Notices and order passed by jurisdictional AO outside faceless system – Invalid. [S. 119, 147, 148, 148A(b), 148A(d), 151A, Art. 226] 1996

The assessee challenged notices under sections 148A(b), 148A(d) and 148 issued by the jurisdictional AO for AY 2017-18, contending they were without jurisdiction since proceedings were required to be conducted under the faceless scheme notified under section 151A by Notification dated 29-3-2022. The Revenue argued that earlier exclusionary orders dated 31-3-2021 and 6-9-2021 (under sections 144B/119) applied to Central and International Taxation cases. Court held that those exclusionary orders applied only to assessment orders and not to reassessment proceedings under section 148A. The faceless scheme under section 151A is an independent mandate and not subject to earlier notifications. Accepting the Revenue's contention would amount to rewriting the scheme. Following *Hexaware Technologies Ltd. v. ACIT (Bom HC), Capitalg LP v. ACIT (Bom HC) and T. Venkataramana Reddy Patloola v. Dy. CIT (Telangana HC),* it was held that reassessment for Central/International charges must also be faceless. Accordingly, the notices and order passed by the jurisdictional AO were illegal and quashed. (AY. 2017-18)

Abhin Anilkumar Shah v. ITO (IT) (2024) 468 ITR 350 / 301 Taxman 156/341 CTR 1033 (Bom)(HC)

S. 148A : Reassessment-Conducting inquiry, providing opportunity before issue of notice-Faceless Assessment-Notice issued by Jurisdictional Assessing Officer-Similar issue pending before Supreme Court-Stay is granted till order to be passed by Supreme Court. [S. 147, 148, 148A(b), 148A(d), 151A, Art. 226] 1997

On writ against the reassessment notice and order disposing the objection the Court held, that the notice under section 148 had been issued by the jurisdictional Assessing Officer, contrary to the faceless mechanism under the provisions of section 144B read with section 151A and the scheme notified by the Central Government dated March 29, 2022 ([2022] 442 ITR (St.) 198) under section 151A. Jurisdictional High Court in *Hexaware Technologies Ltd. v. ACIT (2024) 464 ITR 430 (Bom)(HC)* has ranted the relief. The Supreme Court having been seized with the proceedings arising from Hexaware and an authoritative pronouncement of the Supreme Court on issues of law as involved being awaited. Pending the hearing and final disposal of this petition, there shall be interim reliefs to the extent that there shall be stay to the notice under section 148 and

any other proceeding arising under the notice. Liberty was granted to the parties to apply after appropriate orders were passed by the Supreme Court in Hexaware.
JD Printers Pvt. Ltd. v. ITO (2024)468 ITR 178 / 301 Taxman 1 (Bom)(HC)

1998 **S. 148A: Reassessment-Conducting inquiry, providing opportunity before issue of notice-Faceless Assessment-Notice issued by Jurisdictional Assessing Officer-Contrary to provisions of Section 151A-Order and consequential notice are set aside. [S. 147, 148, 148A(b), 148A(d), 151A, Art. 226]**
The Assessing Officer issued an initial notice under section 148A(b) of the Income-tax Act, 1961 on the issue of certain suspicious transaction made by the assessee. Thereafter an order under section 148A(d) was passed and the consequential notice was issued by the jurisdictional Assessing Officer. On a writ petition challenging that the notice issued under section 148 by the jurisdictional Assessing Officer was invalid and illegal. Following the Judgement in *Hexaware Technologis v. ACIT (2024) 464 ITR 430 (Bom)(HC)* the court held that since the notice was issued in contravention of the provisions of section 151A, order and consequential notice is set aside. (AY. 2017-18)
Nainraj Enterprises Pvt. Ltd. v. Dy. CIT (2024)468 ITR 162/ 165 taxmann.com 674 (Bom) (HC)

1999 **S. 148A : Reassessment-Conducting inquiry, providing opportunity before issue of notice-Notice after three years-Sanction of Specified Authority-Approval to be obtained from Principal Chief Commissioner-Approval from Principal Commissioner-Sanction is invalid-Order and consequent notice is invalid. [S. 147, 148, 148A(b), 148A(d), 151(ii), Art. 226]**
On a writ petition challenging the order passed under section 148A(d) of the Income-tax Act, 1961 and the consequent notice issued under section 148 after a period of three years for the assessment year 2018-19, on the grounds that the sanction to pass the order and the notice was invalid since sanction was obtained from the Principal Commissioner and not from the Principal Chief Commissioner and that the request for a copy of the sanction letter was denied. Allowing the petition the Court held that the Principal Commissioner had accorded sanction for the order passed under section 148A(d) and the consequent notice issued under section 148 after three years for the assessment year 2018-19, and not the Principal Chief Commissioner as required under section 151(ii). The proviso to section 151 had been inserted only with effect from April 1, 2023 and, therefore, was not applicable. The order passed under section 148A(d) and the notice issued under section 148 were quashed and set aside. (AY. 2018-19)
Vodafone Idea Ltd. v. Dy. CIT (2024)468 ITR 346 (Bom)(HC)

2000 **S. 148A : Reassessment-Conducting inquiry, providing opportunity before issue of notice-Jurisdiction-Notices issued by Jurisdictional Assessing Officer (JAO)-Re-assessment proceedings initiated without conducting faceless assessment as envisaged under section 144B –Contrary to provision of law-Notice and order is quashed. [S. 119,120, 144B(7), 144B(8), 148, 1488A(b), 148A(d)), 151A, Art. 226]**
The Jurisdictional Assessing Officer (JAO) issued notice under section 148A(b), thereafter passed order under section 148A(d) and the consequent reopening notice under section 148.

On Writ, the assessee had challenged the reopening notice and the underlying prior notice and the order under section 148A(d). Court held that notice issued under section 148A(b), the order passed thereon under section 148A(d) and the consequent notice issued under section 148 of are all issued by the Jurisdictional Assessing Officer ("JAO") and not by a Faceless Assessing Officer ("FAO"), as is required by the provisions of section 151A. To give effect to the provisions of Section 151A, the Central Government has issued a Notification dated 29-3-2022 whereby a faceless mechanism has been introduced. Thus, necessarily in resorting to a procedure under Section 148A and the consequent notice to be issued under Section 148 of the Act, the Assessing Officer is required to adhere to the provisions of Section 151A read with the Notification. Thus, for a notice to be validly issued for reassessment under Section 148 of the Act, the revenue would need to be compliant with section 151A, which has been interpreted and analysed in detail by a Division Bench of High Court in the case of *Hexaware Technologies Limited v. ACIT [2024] 162 taxmann.com 225/464 ITR 430 (Bom)(HC)*. On the facts of the case the revenue has not complied with the Scheme notified by the Central Government pursuant to Section 151A(2) of the Act. The Scheme has also been tabled in Parliament and is in the character of subordinate legislation, which governs the conduct of proceedings under Section 148A as well as Section 148 of the Act. In view of the explicit declaration of the law in Hexaware, the grievance of the Petitioner-Assessee insofar as it relates to an invalid issuance of a notice is sustainable and consequently, the very manner in which the proceedings have been initiated, vitiates the proceedings. As there is no dispute that the JAO had no jurisdiction to issue the notice, the writ petition is allowed notice and order disposing the objection is quashed. Notification No. 18/2022, dated 29-3-2022 (AY. 2018-19)
Mettler Toledo India (P.) Ltd. v. Asst. CIT (2024) 300 Taxman 394 (Bom.)(HC)

S. 148A : Reassessment-Conducting inquiry, providing opportunity before issue of notice-Jurisdiction-Notices issued by Jurisdictional Assessing Officer (JAO)-Re-assessment proceedings initiated without conducting faceless assessment as envisaged under section 144B –Contrary to provision of law-Notice and order is quashed. [S. 119, 120, 144B(7), 144B(8), 148, 1488A(b), 148A(d)), 151A, Art. 226] 2001

The assessee filed a writ petition on the ground that notice as issued to the assessee under section 148A(b) as also the consequent order under section 148A(d) and the notice issued to the assessee under section 148, had been issued by the Jurisdictional Assessing Officer. It was submitted that in view of the faceless scheme notified under section 151A by the Central Government vide notification dated 29-3-2022, the Jurisdictional Assessing Officer did not have an authority to issue the impugned notices, as necessarily, such exercise if at all was required to be undertaken under the faceless assessment scheme. The Notification dated 29-3-2022 came to the conclusion that the Jurisdictional Assessing Officer would cease to have jurisdiction to issue any notice under section 148A(b) and to take further actions under section 148A(d) and section 148, outside the faceless assessment. The respondents would not dispute this position. The petition is allowed. The notice and order is quashed and set aside. (AY. 2022-23)
Royal Bitumen (P.) Ltd. v. Asst. CIT (2024) 300 Taxman 139 (Bom.)(HC)

2002 **S. 148A : Reassessment-Conducting inquiry, providing opportunity before issue of notice-Jurisdiction-Notices issued by Jurisdictional Assessing Officer (JAO)-Re-assessment proceedings initiated without conducting faceless assessment as envisaged under section 144B-Contrary to provision of law-Notice and order is quashed. [S. 119, 120, 144B(7), 144B(8), 148, 1488A(b), 148A(d)), 151A, Art. 226]**

The jurisdictional Assessing Officer issued on the assessee a notice under section 148A(b) in respect of the assessment year 2018-19 and passed the order under section 148A(d) dated 7-4-2022 and simultaneously issued a notice under section 148 dated 7-4-2022 and passed the reassessment order. On writ the Court held that from a plain reading of the record, it is apparent that the notice under section 148 is issued by the jurisdictional Assessing Officer and not by a Faceless Assessment Officer as is required by the provisions of section 151A. It is now well settled that for a notice to be validly issued for reassessment under section 148, the revenue would need to be compliant with section 151A. In the instant case, the revenue is not in compliance with the Scheme [Notification No. 18/2022/F. No. 370142/16/2022-TPL, dated 29-3-2022] notified by the Central Government pursuant to section 151A(2). The Scheme has also been tabled in Parliament and is in the character of subordinate legislation, which governs the conduct of proceedings under section 148A as well as section 148. Since in view of provisions of section 151A jurisdictional Assessing Officer had no jurisdiction to issue notice under section 148, impugned notice and all consequential proceedings deserve to be quashed and set aside. (AY. 2018-19)

Sprite Investment (P.) Ltd. v. UOI (2024) 300 Taxman 526 /(2025) 473 ITR 342 (Bom.)(HC)

2003 **S. 148A : Reassessment-Conducting inquiry, providing opportunity before issue of notice-Jurisdiction-Notices issued by Jurisdictional Assessing Officer (JAO)-Re-assessment proceedings initiated without conducting faceless assessment as envisaged under section 144B –Contrary to provision of law-Notice and order is quashed. [S. 119, 120, 144B(7), 144B(8), 148, 1488A(b), 148A(d)), 151A, Art. 226]**

The assessee filed writ petition praying that the notice to reopen assessment under section 148A(b) as issued by the Jurisdictional Assessing Officer (JAO) was in the teeth of the provisions of section 151A in as much as the scheme for faceless assessment as notified by the Central Government by Notification No. 18/2022 dated 29 March 2022 as made applicable for taking an action under such provisions, had not been followed. Court held that the provisions of section 151A had clearly brought a regime of faceless assessment. The Court in *Hexaware Technologies Ltd. v. Asstt. CIT [2024] 162 taxmann.com 225/464 ITR 430 (Bom.)* has held that it was not permissible for the JAO to issue a notice under section 148A(b), as the same would amount to breach of the provisions of Section 151A. The Court observed that there is no question of concurrent jurisdiction of both FAO or the JAO with respect to the issuance of notice under section 148. The revenue would also not dispute the factual as also the legal position. In the instant case, admittedly the impugned notice under section 148A(b), the orders thereon and the impugned notice under section 148 have been issued by the JAO. The writ petition is allowed. Reassessment notice and order disposing the objection is quashed and set aside. (AY. 2019-20)

Venus Jewel v. Asst. CIT (2024) 300 Taxman 155 (Bom.)(HC)

S. 148A: Reassessment-Conducting inquiry, providing opportunity before issue of notice-Jurisdiction-Notices issued by Jurisdictional Assessing Officer (JAO)-Cash deposit-Demonetaisation-Sanction is mechanical without application of mind-CIT(A) deleted the addition-Re-assessment proceedings initiated without conducting faceless assessment as envisaged under section 144B –Contrary to provision of law-Notice and order is quashed. [S. 69A, 119, 120, 144B(7), 144B(8), 148, 1488A(b), 148A(d)), 151A, Art. 226] 2004

Assessing Officer made addition under section 69A with respect to said cash deposits. Commissioner (Appeals) deleted the addition. Meanwhile, Jurisdiction Assessing Officer (JAO) also issued reopening notice on very same ground. Assessee filed the writ petition and challenged the reopening notice on basis of principles as laid down by Division Bench of High Court in *Hexaware Technologies Ltd. v. Asstt. CIT [2024] 162 taxmann.com 225/464 ITR 430 (Bom)(HC)*. Court held that JAO was aware of outcome of order passed by Commissioner (Appeals) wherein issue raised in reopening notice was already dealt with but ignored same while issuing reopening notice. Furthermore, Chief Commissioner also accorded sanction under section 151 for reopening assessment in mechanical manner without application of mind. Accordingly there would be no justification for Assessing Officer not to consider, discard and overlook legal effect of orders passed by Appellate Authority. Although there was a pronouncement of a co-ordinate Bench of High Court on provisions of law, in Hexaware Technologies Limited (supra), an affidavit could not be filed before Court, to challenge such pronouncement. Since except for stand taken by JAO that decision of High Court in Hexaware Technologies Ltd. (supra) was not accepted by department, so as to justify impugned notices, there was no acceptable justification as to why proceedings qua impugned notice under section 148 would not stand covered by decision in Hexaware Technologies Limited (supra). Accordingly the notice and order disposing the objection is quashed and set aside. (AY. 2017-18)

Samp Furniture (P.) Ltd. v. ITO (2024) 300 Taxman 452 (Bom.)(HC)

S. 148A : Reassessment-Conducting inquiry, providing opportunity before issue of notice-Jurisdiction-Notices issued by Jurisdictional Assessing Officer (JAO)-Re-assessment proceedings initiated without conducting faceless assessment as envisaged under section 144B –Contrary to provision of law-Notice and order is quashed. [S. 119, 120, 144B(7), 144B(8), 148, 1488A(b), 148A(d), 151A(2), Art. 226] 2005

The Assessing Officer issued notice to the assessee under section 148. The reassessment proceedings led to a reassessment order being passed. The notice issued under section 148 and indeed the underlying order under section 148A(d) were issued by the Jurisdictional Assessing Officer (JAO). On writ the Court held that the notice issued under section 148 and order under section 148A(d) are issued by the Jurisdictional Assessing Officer (JAO) and not by a Faceless Assessing Officer (FAO), as is required by the provisions of section 151A. Following the ratio in *Hexaware Technologies Ltd. v. Asstt. CIT [2024] 162 taxmann.com 225/464 ITR 430(Bom)(HC)* the notice and order disposing the objection is quashed. Notification No. 18/2022, dated 29-3-2022. (AY. 2019-20)

Vidhyadhar Shetty v. ITO (2024) 300 Taxman 185 (Bom.)(HC)

2006 **S. 148A : Reassessment-Conducting inquiry, providing opportunity before issue of notice-Jurisdiction-Notices issued by Jurisdictional Assessing Officer (JAO)-Re-assessment proceedings initiated without conducting faceless assessment as envisaged under section 144B –Contrary to provision of law-Notice and order is quashed. [S. 119, 120, 144B(7), 144B(8), 148, 1488A(b), 148A(d)), 151A(2), Art. 226]**

Reassessment proceedings were initiated against the assessee. The assessee filed writ petition for challenging said notice on the ground that the reassessment proceedings were initiated by the Jurisdictional Assessing Officer (JAO) instead of a Faceless Assessing Officer (FAO), as required by section 151A. It contended that the notice was invalid due to non-compliance with the mandatory faceless assessment procedure. Court held that the revenue is not in compliance with the scheme notified by the Central Government pursuant to section 151A(2). The scheme has also been tabled in Parliament and is in the character of subordinate legislation, which governs the conduct of proceedings under section 148A as well as section 148. The Notice and order disposing the objection is quashed. Followed. *Hexaware Technologies Ltd. v. Asstt. CIT [2024] 162 taxmann.com 225/464 ITR 430 (Bom)(HC) Nainraj Enterprises (P.) Ltd. v. Dy. CIT [Writ Petition (L.) No. 16918 of 2024, dated 2-7-2024] (Bom)(HC)* (AY. 2019-20)

Future Market Networks Ltd. v. Asst. CIT (2024) 300 Taxman 480 (Bom.)(HC)

2007 **S. 148A: Reassessment-Conducting inquiry, providing opportunity before issue of notice-Jurisdiction-Notices issued by Jurisdictional Assessing Officer (JAO)-Re-assessment proceedings initiated without conducting faceless assessment as envisaged under section 144B –Contrary to provision of law-Notice and order is quashed. [S. 119,120, 144B(7), 144B(8), 148, 1488A(b), 148A(d)),151A(2), Art. 226]**

The assessee-company had challenged a notice dated 28-3-2024 issued by the Jurisdictional Assessing Officer (JAO) under section 148A(b) as also an order dated 24-4-2024 passed on such notice under section 148A(d) and as a consequence thereof, a notice issued to the assessee under section 148 of the even date on ground that the substantive scheme being notified to implement section 151A, the jurisdiction of the JAO to issue notice under section 148A(b) was divested and replaced by the Faceless Assessment and, thus, any notice issued by the JAO was illegal and invalid. In the present case the notices dated 28-3-2024 and 24-4-2024 were issued by JAO. The Jurisdictional Assessing Officer would not have jurisdiction to issue the impugned notices more particularly in view of the clear provisions of section 151A read with notification dated 29-3-2022 issued by the Central Government. Notices is held to be held to be illegal and invalid. (AY. 2017-18)

Everest Kanto Cylinder Ltd. v. Asst. CIT (2024) 300 Taxman 190 / (2025) 473 ITR 148 (Bom.)(HC)

2008 **S. 148A: Reassessment-Conducting inquiry, providing opportunity before issue of notice-Jurisdiction-Notices issued by Jurisdictional Assessing Officer (JAO)-Re-assessment proceedings initiated without conducting faceless assessment as envisaged under section 144B –Contrary to provision of law-Notice and order is quashed. [S. 119, 120, 144B(7), 144B(8), 148, 1488A(b), 148A(d)), 151A(2), Art. 226]**

Jurisdictional Assessing Officer issued on assessee a notice under section 148A(b) in respect of assessment year 2018-19 and passed an order under section 148A(d) and

simultaneously issued a notice under section 148 dated 25-1-2024. For a notice to be validly issued by revenue under section 148, revenue would be required to comply with provisions of section 151A so as to adhere to faceless mechanism as notified by Central Government by Notification No. 18/2022/F. No. 370142/16/2022-TPL, dated 29-3-2022. In view of provisions of section 151A, Jurisdictional Assessing Officer had no jurisdiction to pass order under section 148A(d) and issue notice under section 148. Notification No. 18/2022/F. No. 370142/16/2022-TPL, dated 29-3-2022. (AY. 2018-19)
L and T Finance Ltd. v. Asst. CIT (2024) 300 Taxman 531 (Bom.)(HC)

S. 148A : Reassessment – Faceless assessment – Jurisdiction – Method of accounting – Mandatory speaking order – Reassessment notice bad in law.[S. 143(1), 144B, 145, 148, 148A(b), 148A(d), 151, 151A, 194IA, Art. 226] 2009

The assessee, a co-developer in a housing project, followed the project completion method and filed return of income declaring nil income, which was processed under section 143(1). On the basis of information from the Insight Portal regarding sale of flats and TDS under section 194IA, the Jurisdictional Assessing Officer issued notice under section 148A(b) alleging undisclosed income. The Bombay High Court held that such notice was without jurisdiction as, after insertion of section 151A and the notification dated 29-3-2022, all reassessment proceedings had to be carried out through the Faceless Assessment Scheme under section 144B. Further, the AO failed to pass a speaking order by not considering the assessee's contention that she followed the project completion method. Accordingly, the reassessment notice and order were quashed. Court held that , notice under section 148 issued by the Jurisdictional Assessing Officer outside the faceless scheme is without jurisdiction; reassessment order must be speaking and consider assessee's accounting method,failure renders it invalid.(AY. 2016-17)
Sushila Sureshbabu Malge v. ITO (2024) 300 Taxman 302 / 468 ITR 624 (Bom.)(HC)

S. 148A : Reassessment-Conducting inquiry, providing opportunity before issue of notice-Interest income-Any information-It is incumbent on the AO to apply his mind to all such materials-Any information which is derived from S. 135A would be sacrosanct and/or would be free of defects-Interest income received from the bank-Notice issued is arbitrary and vitiated by non application of mind hence quashed. [S. 135A, 143(1), 148A(b), 148A(d), Art. 14, 19(1)(g), 226, 265, 300A] 2010

The assessee, an individual, filed her return of income for the relevant assessment year. An intimation was issued to the assessee under section 143(1) without any addition, accepting the total income disclosed by the assessee in her return of income. Thereafter, information was received from the Insight Portal, intimating that there were discrepancies with regard to the interest income set out in the return filed for the relevant assessment year. The assessee claimed that the information received from the portal was incorrect. The Assessing Officer issued notice under section 148 and dispensed with applicability of section 148A on ground that he was in receipt of information with respect to discrepancies in interest income as per scheme notified under section 135A, which provided for faceless collection of information. On writ the Court held that it cannot be conceived that at all material times, the information available in the electronic mechanism/system, would be free from errors and defects.

Once a defect was pointed out on information as available on portal, it would be duty of Assessing Officer to examine version of assessee in pointing out that information was not correct and same would require due consideration for any further action to be taken to issue notice under section 148. When electronic information was available under faceless mechanism and there was other material available, as may be gathered by Assessing Officer or furnished by assessee, it would be incumbent on Assessing Officer to apply his mind to all such materials and only thereafter take a well considered view of matter to issue a notice under section 148 by dispensing provisions of section 148A. Court held that reopening notice was arbitrary and vitiated by non-application of mind and is set aside. (AY. 2020-21)

Benaifer Vispi Patel v. ITO (2024) 340 CTR 581 / 241 DTR 209 / 300 Taxman 248/(2025) 475 ITR 704 (Bom)(HC)

2011 **S. 148A : Reassessment-Conducting inquiry, providing opportunity before issue of notice-Order by Jurisdictional Assessing Officer (JAO) and not by a Faceless Assessing Officer (FAO), as required by provisions of section 151A,-Notice under sections 148A(b)/148 was not sustainable and was liable to be set aside. [S. 148, 148A(b) 148A(d), 151A(2), Art. 226]**

Jurisdictional Assessing Officer issued a notice dated 30-3-2024 under section 148A(b) and order passed thereon under section 148A(d) dated 25-4-2024 and consequent notice under section 148 dated 25-4-2024 was issued to the assessee in respect of returns filed by the assessee for the assessment year 2017-18. The assessee had filed a writ petition to challenge the notice on the ground that the notice and order under sections 148A(d)/148A(b) were issued by the Jurisdictional Assessing Officer (JAO) and not by a Faceless Assessing Officer (FAO), as required by the provisions of section 151A. it is apparent that the Revenue has not complied with the Scheme notified by the Central Government pursuant to section 151A(2). The Scheme has also been tabled before the Parliament and is in the character of subordinate legislation, which governs the conduct of proceedings under section 148A as well as section 148. In view of the explicit declaration of the law in *Hexaware Technologies Ltd. v. Asstt. CIT (2024) 162 taxmann.com 225 / 464 ITR 430 (Bom)(HC)* the grievance of the petitioner-assessee insofar as it relates to an invalid issuance of a notice is sustainable. The proceedings initiated under the impugned notice issued to the petitioner under section 148, would not be sustainable in view of the judgment rendered in Hexaware Technologies Ltd the JAO had no jurisdiction to issue the impugned notice. The writ petition is accordingly allowed. (AY. 2017-18)

Kairos Properties (P) Ltd. v. ACIT (2024) 340 CTR 690/ 241 DTR 97 /468 ITR 168 /165 Taxmann.com 760 (Bom)(HC)

2012 **S. 148A: Reassessment-Conducting inquiry, providing opportunity before issue of notice-Notice in the name of deceased-Non application of mind by the Assessing Officer and sanctioning authority-Notice and order disposing the objection is quashed. [S. 148, 148A(b), 148A(d), 151, Art. 226]**

On writ the Court held that no enquiry as per S. 148A has been made because if the AO had only made such an enquiry or even bothered to verify the IT Portal relating to the

deceased assessee, he would have certainly come to know that the assessee is deceased and had died on 23rd July, 2020. The notice under S. 148A(b) has been issued without making the enquiry as mandated under S. 148A. Therefore, the notice issued under S. 148A(b) itself would be bad in law and has to be quashed and set aside. Approval applied for and granted under S. 151 exposes the total non application of mind by the AO who applied for the approval, the Addl. /Jt. CIT who recommended granting of approval and the Principal CIT who granted the approval. Row 9 of the approval form states "time-limit for current proceedings covered under S. 149(1)(b) for more than 3 years but not more than 10 years. The assessment pertains to asst. yr. 2019-20, whereas the notice issued under S. 148A(b) is dt. 29th March, 2023 and, therefore, within the three years period. Taking Row 9 to be correct, then Row 7 indicates the quantum of income which has escaped assessment Rs. 3 lakhs. Therefore, the notice issued under S. 148A(b) itself could not have been issued. If the time-limit for current proceedings is covered under s. 149(1)(b), i. e., for more than 3 years but not more than 10 years, Principal CIT has no power to grant approval and the approval should have been granted by the Principal Chief CIT. In the circumstances, the order dt. 18th April, 2023 under S. 148A(d) and the consequent notice also dt. 18th April, 2023 under S. 148 are quashed and set aside. Followed, *Dhirendra Bhupendra Sanghvi v. Asstt. CIT (2023) 151 taxmann.com 541 (Bom) (HC)* (AY. 2020-21)
Rahul Rajendra Adhikari v. ITO (2024) 340 CTR 598 / 241 DTR 469 (Bom)(HC)

S. 148A : Reassessment-Conducting inquiry, providing opportunity before issue of notice-Failure to respond initial notices-Stoppage of business-Notice was not sent to existing E. mail-Matter remanded to the Assessing Officer for reconsideration and decide in accordance with law. [S. 147, 148, 148A(b), 148A(d), Art. 226] 2013
Allowing the petition the Court held that since the assessee did not submit its reply along with documents in response to the initial notice under section 148A(b) and in view of the specific contention of the assessee that if one more opportunity was granted, it would submit reply along with documents, the order passed under section 148A(d), the notice issued under section 148, the subsequent order under section 147 read with section 144 and the notices of penalty issued under sections 271AAC(1) and 272A(1)(d) were set aside. The matter was remitted to the Assessing Officer for reconsideration from the stage of submitting of reply by the assessee to the notice under section 148A(b) and thereafter, proceeding in accordance with law. (AY. 2018-19)(SJ)
Bhavani Glass And Plywood Traders v. ITO (2024)468 ITR 26 (Karn)(HC)

S. 148A : Reassessment-Conducting inquiry, providing opportunity before issue of notice-Disclose of information-Notice and order disposing the objection is valid-Interpretation of taxing statutes-Literal Interpretation-It is settled that the words used in the provisions of a taxing statute are required to be given their plain meaning and nothing can be implied from or read into it. [S. 148, 148A(b), 148A(d), Art. 226] 2014
Dismissing the petition the Court held that the jurisdictional authority along with notice dated March 13, 2023 under section 148A(b) of the Act had supplied information available with it with the documents such as Insight Portal, wherein information and description had been given. In the notice dated March 13, 2023 under section 148A(b)

and the order dated March 28, 2023 under section 148A(d) of the Act issued by the Assessing Officer, it was clearly mentioned that in the Insight Portal, the case of the assessee was flagged as a high risk case for the relevant assessment year. The order under section 148A is valid. It is settled that the words used in the provisions of a taxing statute are required to be given their plain meaning and nothing can be implied from or read into it. The scheme for reassessment of escaped income introduced by the Finance Act, 2021 ([2021] 432 ITR (St.) 52). (AY. 2019-20)
Chaturbhuj Gattani v. ITO (2024)468 ITR 295/336 CTR 369/233 DTR 457 (Raj)(HC)
Saroj Gattani v. ITO (2024)468 ITR 295/336 CTR 369/233 DTR 457 (Raj)(HC)

2015 **S. 148A: Reassessment-Conducting inquiry, providing opportunity before issue of notice-Notice after three years-Limitation-Income exceeding Rs. 50 lakhs-Process for issuance of notice started before date of notification-Order and consequent notice is valid. [S. 147, 148, 148A(b), 148A(d), 149, Art. 226]**
Dismissing the petition the Court held that since the Information available with the Assessing Officer of the total escaped income was Rs. 1,84,45,194, which was more than Rs. 50 Lakhs. That the notice dated April 5, 2023 issued under Section 148 was not in violation of the Notification of the Ministry Of Finance Dated March 29, 2023. Since the initial notice issued under Section 148A(b) had already been issued to the assessee on February 28, 2023. Therefore, the process of issuing notice under Section 148 had begun prior to the issuance of the Notification. Hence, the notice under Section 148 had not been issued in non-compliance of the Notification. The Assessee would have the opportunity to represent before the Assessing Officer in response to the notice issued under Section 148. Therefore, the order under Section 148A(d) and the consequent notice under Section 148 is valid. (AY. 2016-17)
Jugal Kishore Lohiya v. PCIT (2024)468 ITR 288 (Raj)(HC)

2016 **S. 148A : Reassessment-Conducting inquiry, providing opportunity before issue of notice-Loan-Non-consideration of explanation-Duty of Assessing Officer to consider assessee's Explanation and pass reasoned order-Non application of mind-Notice and order is quashed and set aside. [S. 147, 148, 148A(b), 148A(d), Art. 226]**
Allowing the appeal against the single Judge order, the Court held that it is the duty of the Assessing Officer to consider the explanation of the assessee substantiating the alleged transaction and give reasons as to why it was not acceptable. The Assessing Officer had only stated that the assessee had failed to substantiate the alleged amount of escaped income of Rs. 25 lakhs was a genuine transaction. The order passed under section 148A(d) is a non-speaking order without application of mind. It also revealed that the Assessing Officer had no material to controvert the explanation offered by the assessee that the lending entity was non-banking financial company and that the loan was taken in the assessment year 2019-20 and repaid along with interest in the same year and this had been substantiated by the assessee by producing the ledger copy of the loan account. Reassessment notice is quashed and all other proceedings are set aside. (AY. 2019-20)
Excel Commodity and Derivative Pvt. Ltd. v. UOI (2024)468 ITR 21 (Cal)(HC)

S. 148A : Reassessment-Conducting inquiry, providing opportunity before issue of notice-Pendency of appeal-Scrutiny assessment order pending in appeal rendered infructuous-Order passed under section 148A(d) is held to be valid-Assessee is given liberty to seek appropriate remedy if adverse reassessment order is passed. [S. 143(3), 147, 148, 148A(b), 148A(d), 250, Art. 226] 2017

On writ the Court held that in view of the Supreme Court judgement in *UOI v. Ashis Agarwal (2022) 444 ITR 1(SC)* the notice under section 148 was required to be treated as notice under section 148A(b) and further proceedings were required to be drawn complying with the mandate of section 148A which was introduced after the amendment, effective from April 1, 2021. The order under section 148A(d), dated July 26, 2022, had clearly recorded that in view of the judgment of the Supreme Court, no scrutiny assessment could be made on the basis of show-cause notice and hence scrutiny assessment order passed by the Assessing Officer had become infructuous. Therefore, it was vividly clear that the assessment order under section 147 did not survive in the eye of law. Consequently, the subsequent demand notice which had been issued was also rendered ineffective and inoperative in law. What survived was an order passed under section 148A(d) on July 26, 2022 under the new regime of law after amendment in the Act with effect from April 1, 2021. Therefore, the appeal which had been filed by the assessee assailing the legality and validity of the scrutiny assessment order dated March 24, 2022 was rendered infructuous. The pre deposit amount, if any, made by the assessee while filing appeal against the order dated March 24, 2022 was required to be refunded forthwith to the assessee. The assessment order and the consequent demand notice, both dated March 24, 2022 were rendered ineffective and inoperative in law. The order dated July 26, 2022 passed under section 148A(d) for issue of notice under section 148 had not been interfered with. The assessee is given liberty to seek such remedy as may be available under the law.

Mittal Pigments Pvt. Ltd. v. CIT (2024)468 ITR 342 (Raj)(HC)

S. 148A : Reassessment-Conducting inquiry, providing opportunity before issue of notice-Faceless assessment-International tax charges-Notices issued by Jurisdictional Assessing Officers and consequent proceedings and orders set aside-Revenue is given liberty to proceed in accordance with new procedure. [S. 144B, 147, 148, 148A, 151A, Art. 226] 2018

Allowing the petitions the Court held that to the limited extent, that according to the plain and unambiguous language used in the Gazette notification dated March 29, 2022 ([2022] 442 ITR (St.) 198) (Scheme) and Central Board of Direct Taxes order dated September 6, 2021 the notice under section 148 did not fall within the "exception" stated in the order of the Central Board of Direct Taxes wherein direction was issued about passing of "assessment orders" by the National Faceless Assessment Centre under section 144B except in two situations, one of which was passing of assessment orders in cases assigned to international tax charges. The taxpayer was nowhere distinguished between non-residents and residents. The notice issued under section 148 must comply with the requirement of the scheme whether or not the taxpayer was a non-resident or a resident. The expression used in clause 3(b) of the scheme dated March 29, 2022 ([2022] 442 ITR (St.) 198) did not preclude the mandatory faceless assessment procedure

for issuance of notice under section 148. The Revenue had erred in not following such procedure and since the notices under section 148 were not issued as prescribed, the subsequent proceedings on these notices and consequent assessment orders were vitiated and accordingly, set aside. Liberty was given to the Revenue to proceed in accordance with law.
Venkataramana Reddy Patloola v. Dy. CIT (2024)468 ITR 181 / 167 taxmann.com 411 (Telangana)(HC)

2019 **S. 148A: Reassessment-Conducting inquiry, providing opportunity before issue of notice-Jurisdiction-Notices issued by Jurisdictional Assessing Officer (JAO)-Re-assessment proceedings initiated without conducting faceless assessment as envisaged under section 144B –Contrary to provision of law-Notice and order is quashed. [S. 119,120, 144B(7), 144B(8), 148, 1488A(b), 148A(d)), 151A, Art. 226]**
On writ the Court held that notice issued by JAO under section 148 and re-assessment proceedings initiated thereafter without conducting faceless assessment as envisaged under section 144B were contrary to provisions of law and same is quashed. Followed, *Jasjit Singh v. UOI [2024] 165 taxmann.com 114 (P & H)(HC).*
Surya Cotspin Ltd. v. PCCIT (2024) 300 Taxman 613 /(2025) 475 ITR 178 (P&H)(HC)

2020 **S. 148A: Reassessment-Conducting inquiry, providing opportunity before issue of notice-Opportunity of hearing-Order passed without giving an opportunity of hearing is quashed and set aside. [S. 148A(b) 148A(d), Art. 226]**
The assessee filed writ petition challenging the show cause notice. Allowing the petition the Court held that since right to personal hearing is embedded in section 148A(d) itself, denial of such opportunity vitiates order passed under section 148A(d). Provisions of section 148A(b) confer a right on assessee to be provided with an opportunity of hearing, Jurisdictional Assessing Officer could not have decided on show cause notice and passed order under section 148A(d) without granting an opportunity of hearing to assessee. Matter remanded. (AY. 2020-21)
Pratima Halder v. UOI (2024) 300 Taxman 226 / 468 ITR 23 (Cal.)(HC)

2021 **S. 148A : Reassessment-Conducting inquiry, providing opportunity before issue of notice-Investigation was shared to the petitioner-Sufficient time was allowed to file the reply-Sanction was granted-Notice is valid-Writ petition is dismissed. [S. 148, 148A(b) 148A(d) 151(2), Art. 226]**
Assessing Officer issued notice under section 148A(b) upon petitioner alleging certain business expenses claimed by assessee was not allowable. Petitioner challenged notice on ground that no enquiry was conducted regarding information received and approval of specified authority was also not obtained for conducting enquiry, as required by clause (a) of section 148A. Petitioner further submitted that only 7 days time was given to petitioner to submit reply to notice; while, clause (b) contemplates 30 days notice. Dismissing the petition the Court held that not only information, but investigation report was also shared with petitioner-Further, first notice was issued to petitioner on 21-3-2024 and, by last notice dated 3-4-2024, petitioner was allowed time to file reply till 13-4-2024, therefore, petitioner had more than three weeks to submit complete reply. Since

petitioner had not demanded personal hearing, submission that personal hearing was not given to petitioner by Assessing Officer before issuing notice did not appear to be correct. Further, since Principal Chief Commissioner of Income Tax had granted approval on 19-4-2024 and order under clause (d) of section 148A was passed by Assessing Officer, same day, statutory requirement of prior approval was also met and order passed by Assessing Officer could not be faulted on this count. Accordingly notice issued to petitioner under section 148A(b) is upheld. Writ petition is dismissed. (AY. 2017-18)(SJ)
Mandakini Travels and Tours (P.) Ltd. v. UOI (2024) 300 Taxman 278 (Uttarakhand)(HC)

S. 148A : Reassessment-Conducting inquiry, providing opportunity before issue of notice-Power to transfer cases-Transfer order dated 11-1-2023-Case of petitioner was transferred from Vadodara to Ahmedabad-Assessing Officer at Vadodara had no jurisdiction to issue notice under section 148A for re-opening of assessment is not valid-Once NCLT approved application filed under IBC, 2016 and resolution plan was also approved, Assessing Officer would not have any jurisdiction to re-open assessment with regard to assessment year 2019-20 [S. 127(2), 127(3), 148, 148A(b) 148A(d), Insolvency and Bankruptcy Code, 2016, 10, Art. 226] 2022

An order under section 127(2) dated 11-1-2023 was passed by the Principal Commissioner, Vadodara-I transferring the case of the petitioner from Vadodara to Central Circle-1(1) Ahmedabad. However, in spite of the above facts, the Assessing Officer at Vadodara issued the notice under section 148A(b) on 14-2-2023 calling upon the petitioner to show cause as to why the notice under section 148 should not be issued for re-opening of the assessment for assessment year 2019-20. After the order of transfer of the case of the petitioner passed on 11-1-2023 under section 127(2), the Assessing Officer at Vadodara has no jurisdiction to issue the notice for reopening for the assessment year 2019-20. Even otherwise, when the NCLT has approved the application filed under section 13(6) of IBC, 2016 and resolution plan submitted by the applicant was approved, the Assessing Officer would not have any jurisdiction to reopen the assessment with regard to the assessment year 2019-20. Assessee is engaged in manufacturing of seamless steel cylinder. An application under section 10 of IBC was filed by assessee and same was admitted and an interim resolution professional was appointed. National Company Law Tribunal (NCLT) by order dated 16-8-2019 approved resolution plan and final order was passed on 22-10-2019. Subsequently, Assessing Officer issued notice under section 148A(b) calling upon assessee to show cause as to why notice under section 148 should not be issued for re-opening of assessment for assessment year 2019-20. On writ the Court held that once NCLT approved application filed under IBC, 2016 and resolution plan was also approved, Assessing Officer would not have any jurisdiction to re-open assessment with regard to assessment year 2019-20. Followed, *Ghanashyam Mishra & Sons (P.) Ltd. v. Edelweiss Asset Reconstruction Co. Ltd. [2021] 126 taxmann.com 132/166 SCL 237* (AY. 2019-20)
Maruti Koatsu Cylinders Ltd. v. Dy. CIT (2024) 300 Taxman 388 (Guj.)(HC)

2023 **S. 148A : Reassessment-Conducting inquiry, providing opportunity before issue of notice-Sale of immovable property-Failure to reply-Reasonable cause-In view of submissions made by assessee, assessment order and penalty order is set aside on condition that assessee would remit a sum towards income tax demand, as agreed to, and submit a reply to show cause notice-Matter remanded-Petitioner is directed to deposit Rs. 2,00,000 lakhs towards income-tax demand. [S. 143(3), 148, 148A(b) 148A(d), Art. 226]**

Petitioner and other legal heirs of late A sold an immovable property by executing sale deed. Petitioner received sale consideration pertaining to his share in sale proceeds and deposited same in his bank account. In following assessment year, petitioner created fixed deposits for a sum of Rs. 60,04,090. Reassessment proceedings were initiated against petitioner. Petitioner did not reply to such notice. Assessment order and impugned penalty order were issued. On writ the petitioner submitted that she was diagnosed with Grade 2 Carcinoma of tongue and, in view thereof, was unable to reply to show cause notice or participate in proceedings culminating in impugned assessment and penalty orders. In view of submissions made by assessee, assessment order and penalty order is set aside on condition that assessee would remit a sum towards income tax demand, as agreed to, and submit a reply to show cause notice. Matter remanded. Petitioner is directed to deposit Rs. 2,00,000 lakhs towards income-tax demand. (AY. 2015-16)(SJ)

Achuthan Rajarajan v. Assessment Unit, ITD (2024) 300 Taxman 241/468 ITR 159 (Mad.) (HC)

2024 **S. 148A : Reassessment-Conducting inquiry, providing opportunity before issue of notice-Officer who has issued the notice and heard the matter-Order is passed by the Officer who has not heard the matter-Order and notice is set aside. [S. 148, 148A(b), 148A(d), Art. 226]**

Assessing Officer of assessee issued a show cause notice under section 148A(b) stating that income chargeable to tax for relevant assessment year had escaped assessment and passed order under section 148A(d). Assessee filed petition contending that order passed under section 148A(d) was without jurisdiction as the order was not passed by person who had heard assessee. Allowing the petition the Court held that since order under section 148A(d) was not passed by Officer who had heard assessee, same is set aside. Court held that the Assessing Officer shall pass fresh orders pursuant to show cause notice under section 148(b) after affording an opportunity of hearing to the petitioner, as expeditiously as possible. (AY. 2017-18)

Johnson Koomullil Thomas v. ITO (2024) 300 Taxman 318 (Ker)(HC)

2025 **S. 148A : Reassessment-Conducting inquiry, providing opportunity before issue of notice-Unexplained investments-Immovable property –Added entire sale consideration-[S. 69, 148, 148A(b), 148A(d), Art. 226]**

Assessee replied to notice and annexed documents relating to purchase of property. Assessing Officer rejected reply and passed an order under section 148A(d) and consequently issued a notice under section 148. Assessee did not participate in proceedings pursuant to notice under section 148. Assessing Officer passed assessment

order and added entire sale consideration for purchase of property to total income of assessee. On writ the Court held that since Assessing Officer while passing assessment order had not taken into consideration documentary evidence submitted by assessee perhaps on account of non participation by assessee, Assessing Officer is t directed to provide opportunity of hearing to assessee and pass fresh assessment order. (AY. 2015-16)

Pandian Narayanan v. NFAC (2024) 300 Taxman 559 (Mad.)(HC)

S. 148A: Reassessment-Conducting inquiry, providing opportunity before issue of notice-Unexplained investments –Violation of principle of natural justice-Order passed without considering the documents submitted by the assessee-Assessment order is set aside and matter is remanded for reconsideration from stage of reply to show cause notice cum draft assessment order. [S. 69, 148, 148A(b), 148A(d), Art. 226] 2026

Reassessment notice under section. 148 is initiated against the assessee. Proceedings under section 148 were initiated against the assessee in respect of two alleged purchases of immovable property. Assessment order is passed making addition to income of assessee. On writ the Court held that the assessee had placed on record reply to show cause notice cum draft assessment order and produced list of attachments thereto including I. T. acknowledgment of assessee's mother and father, documents pertaining to sources of income and bank statements. Assessee had previously enclosed all documents pertaining to purchase of relevant immovable property and construction undertaken thereon. Court held that assessee having submitted a reply along with relevant documents, non consideration thereof violated principles of natural justice assessment order is unsustainable. Accordingly the assessment order is set aside and matter is remanded for reconsideration from stage of reply to show cause notice cum draft assessment order. (AY. 2015-16)

Praveen Sanjiv v. ITO (2024) 300 Taxman 33 (Mad.)(HC)

S. 148A : Reassessment-Conducting inquiry, providing opportunity before issue of notice-Amounts of investments not fully disclosed in books of account-Report from District Valuation Officer (DVO)-Fixed asset and Capital WIP-Failure to apply mind-Reassessment notice and order disposing the objection is quashed. [S. 48, 69A, 148, Art. 226] 2027

Assessee-company is engaged in business of real estate development and running of hotels. During original assessment proceedings, assessment was framed at a total income as against declared income of assessee. Subsequently, Assessing Officer received a valuation cell report from District Valuation Officer (DVO) with respect to cost of property. After perusal of valuation report, it was found that DVO had estimated investment which were made by assessee in renovation/ reconstruction of property, furthermore report also mentioned, that assessee had declared total investment as nil. Assessing Officer issued reopening notice on ground that income had escaped assessment. On writ the Court held that sole ground for reopening was valuation report, even though, assessee had declared cost of said property under head Fixed Assets and Capital WIP. Also there was no statement or discussion by Assessing Officer as to what was basis and why he should rely on valuation report. Since reasons for reopening of

assessment did not reflect that Assessing Officer had applied his mind to ascertain as to whether in fact assessee had already declared value of aforesaid property under Fixed Assets and Capital WIP or whether such valuation is correct or not. Reassessment notice and order disposing the objection is quashed. (AY. 2010-11, 2011-12)
Divine Infracon (P.) Ltd. v. Dy. CIT (2024) 300 Taxman 605 /242 DTR 565 /(2025) 342 CTR 46/ 475 ITR 200 (Delhi)(HC)

2028 **S. 148A: Reassessment-Conducting inquiry, providing opportunity before issue of notice-Unexplained money-Sale consideration received in cash-Sale by Power of Attorney holder-Since a detailed adjudication on merits of information available with Assessing Officer and defence set up by assessee is not contemplated at stage of passing an order under section 148A(d)-Writ petition is dismissed. [S. 69A, 148, 148A(b), 148A(d), Power of Attorney Act, 1882, Art. 226,]**
Assessing Officer issued on assessee-company a notice under section 148A(b) intimating that on investigation of documents in his possession it was seen that assessee during year had sold 13 plots in cash and sales consideration received by it remained unexplained and supplied documents to assessee. He thereafter passed an order under section 148A(d) stating that amount of sales consideration received in cash required to be reassessed. On writ the Court held that stand taken by assessee that it had no knowledge about sale transaction by power of attorney holder is not a ground for revenue not to proceed against it. Since a detailed adjudication on merits of information available with Assessing Officer and defence set up by assessee is not contemplated at stage of passing an order under section 148A(d). Writ petition is dismissed. (AY. 2020-21)
Agarwal Polysacks Ltd. v. Pr. CIT (2024) 300 Taxman 535 (Raj.)(HC)

2029 **S. 148A: Reassessment-Conducting inquiry, providing opportunity before issue of notice-Natural justice-Order passed next day-Rules of natural justice are found completely broken-Order is quashed and set aside-AO is directed to pass the order after giving a reasonable opportunity of hearing. [S. 142(1), O 148, 148A(b)I, 148A((d), Art. 226]**
On writ the Court held that in the present facts, first notice under s. 148A(b) was not served in t manner provided. Second, the order under s. 148A(d) was initially not served. Later, it was served with delay of nine months. Even if it is assumed that the objections to jurisdiction (raised by the assessee), had been rejected on 20th March, 2024, there existed no justifiable situation circumstance as may have allowed the assessing authority (whether faceless or otherwise) to pass the reassessment order on the next day, without issuing any further notice in terms of s. 142(1). By taking that course, the assessing authority has consciously allowed a wholly ex parte order to arise. Under the new regime, though the assessing authority may remain faceless, at the same time, it cannot act mindless of the procedural law. In view of the above, no useful purpose may be served in keeping the present petition pending or calling for a counter-affidavit at this stage. rules of natural justice are found completely broken in the present case. Hence, the impugned reassessment must be set aside for this reason alone, at this stage itself. Since the assessee is now aware of the contents of the notice dt. 22nd March, 2023, he may furnish reply thereto within a period of three weeks from today. Considering that

reply and keeping in mind the observations made above, the reassessment proceedings, if any may arise, be continued and concluded accordingly, without (the assessee) raising any objection as to limitation. *Satish Kumar Bansal (HUF) v. NFAC (2024) 338 CTR 726 / 237 DTR 354 (All) 354 (All)(HC).* (AY. 2016-17)
V. S. Finance Ltd. v. CCIT (2024) 340 CTR 106 / 240 DTR 346 (All) (HC)

S 148A: Reassessment-Conducting inquiry, providing opportunity before issue of notice-Merger-Amalgamation-Notice in the name of non-existing amalgamating company-Transferor-company got merged with assessee/transferee-company under scheme of amalgamation and thereby lost its existence, assessment order passed subsequently in name of said non-existing entity, would be without jurisdiction and set aside. [S. 147, 148, Art. 226] 2030

The company Siri Drugs India Pvt Ltd got merged with the assessee-company under the scheme of amalgamation with effect from 1-4-2015. As a consequence of the dissolution of the said company, the transferor-company i. e. Siri Drugs India Pvt Ltd became non-existing and only the transferee-company remained in existence along with the assets and liabilities of the amalgamated company. Though Siri Drugs India Pvt Ltd stood dissolved with effect from 1-4-2015, notice under section 148A(b) was issued in the name of the said non-existing company i. e. Siri Drugs India Pvt Ltd alleging escapement of income for the assessment year 2016-17. The assessee raised objection as to the veracity of the notice as it stood issued against the company which ceased to exist and which became non-existing since 1-4-2015. However, the Assessing Officer ignoring the said fact held that it was a fit case for issuance of notice under section 148. On writ the Court held that Pursuant to the approval of the scheme of merger given by the High Court, the transferor company i. e., DG (P) Ltd. has become extinct w. e. f. 1st April, 2015; notice under ss. 148A and 148 in the name of Siri Drugs India Pvt Ltd, being bad in law, are quashed and set aside. Followed *PCIT v. Maruti Suzuki India Ltd. (2019) 309 CTR 433/ 180 DTR 185 / 416 ITR 613 (SC), a CLSA India (P) Ltd. v. Dy. CIT (2023) 7 NYPCTR 174 (Bom) (Bom)(HC), Spice Infotainment Ltd. v. CIT [2012] 247 CTR 500 (Delhi) (HC).* (AY. 2016-17)
Virchow Drugs Ltd. v. ITO (2024) 340 CTR 499 / 241 DTR 106 / 156 Taxmann.com 89 (Telangana)(HC)

S. 148A: Reassessment-Conducting inquiry, providing opportunity before issue of notice-After the expiry of four years-Audit objections-Non-existence of tangible material-Order passed dropping the proceedings-Subsequent corrigendum to order under Section 148A(d) for issue of notice-Change of opinion-Review same material impermissible-Notice via corrigendum to order and consequent reassessment proceedings unsustainable. [S. 147, 148, 148A(b), 148A(c), 148A(d), Art. 226] 2031

The Assessing Officer issued a notice, dated May 24, 2022, under section 148A(b) and the assessee filed a reply as required under section 148A(c) submitting that it did not sell any immovable property during the assessment year 2017-18 and therefore, no long-term capital gains arose also clarified that it had purchased an immovable property. On examination of the transactions and considering the assessee's submissions an order dated July 30, 2022 was passed under section 148A(d) concluding that the reassessment

proceedings under section 147 could be dropped. On the same date, the Revenue issued a corrigendum against the original order passed under section 148A(d) allowing the continuation of reassessment proceedings by issuing a notice under section 148 which had originally been dropped. On a writ petition allowing the petition, that the Court held that the proceedings were firstly closed by the Revenue by an order, dated July 30, 2022, under section 148A(d) upon being satisfied after examining the audited final accounts filed by the assessee indicating that there was no immovable property held by the petitioner as on April 1, 2016 relevant to the assessment year 2017-18 and therefore, there was no sale undertaken by it. On the same day itself, hours after terminating the proceedings, the Revenue had issued a corrigendum to initiate the reassessment proceedings under section 147, without any new material which warranted reopening the assessment. From the two notices it would crystallize that the corrigendum had been issued merely on the basis of a change of opinion as two different conclusions had been drawn on the basis of same material, i. e., audited final accounts of the assessee. The Assessing Officer had apparently reviewed his own decision, which was not permissible. Therefore, the notice issued under section 148 via corrigendum to the order, dated July 30, 2022, under section 148A(d) and the consequential reassessment proceedings under section 147 were unsustainable and hence quashed. (AY. 2017-18)
Aarti Fabricott Pvt. Ltd. v. ITO (2024)467 ITR 612 (Delhi)(HC)

2032 **S. 148A: Reassessment-Conducting inquiry, providing opportunity before issue of notice-Initial notice under erstwhile provision after coming in to force of new provisions-Directions of Supreme Court cannot be construed as warrant to reopen concluded proceedings which had attained finality-Notices and order quashed. [S. 148, 148(A)(b), 148A(d), Art. 226]**
Allowing the petition the Court held that that the judgment of the Supreme Court in *UOI v. Ashish Agarwal (2022) 444 ITR 1 (SC)* neither spoke of completed assessments nor did it embody any direction that could be legitimately or justifiably construed as mandating completed assessments being reopened especially where the assessee had raised no objection to the initiation of proceedings. The Assessing Officer had accepted the assessee's explanation with respect to the issues in respect of the source of investment made in shares and the sale of the immovable property and did not make any additions. It was only thereafter that the notices were issued for the assessment year 2013-14 for which the final assessment order was passed prior to the judgment of the Supreme Court. The Department had proceeded on a perceived understanding of the decision rendered by the Supreme Court and its purport being the recommencement of all proceedings for reassessment under section 147 which stood initiated in terms of notices issued under section 148 after April 1, 2021 and the judgment mandating them to rewind pending proceedings to the stage of section 148A(b). The show-cause notice dated May 30, 2022 issued under section 148A(b), the order dated July 19, 2022 issued under section 148A(d) and the notice dated July 20, 2022 under section 148 were quashed. (AY. 2013-14)
Anindita Sengupta v. Asst. CIT (2024)467 ITR 624 (Delhi)(HC)

S. 148A: Reassessment-Conducting inquiry, providing opportunity before issue of notice-Service of notice on address given by assessee and delivery report received-Service of notice is valid. [S. 148, 148A(b), 148A(d), Art. 226] 2033

Held, that what was sought to be contended was that the service of the notice was not effected through e-mail. That was not the mandate of section 148A(b) of the Act. The Revenue had countered the version of the assessee by placing on record the delivery report at the address of the assessee. There was no quarrel regarding the address on record or the delivery report. The requirement of natural justice stood fulfilled once the notice was served at the admitted address of the assessee. The service of notice is valid. Writ petition is dismissed. (AY. 2016-17)

Mahabir Singh Joon v. ITO (2024)467 ITR 664 (Delhi)(HC)

S. 148A : Reassessment-Conducting inquiry, providing opportunity before issue of notice-Monetary limitation-Sold by Co-owners-Less than Rs. 50 lakhs-Notice and order is set aside. [S. 148, 148A(b), 148A(d), 149(1)(b), Art. 226] 2034

Allowing the petition the Court held that the Assessing Officer ought to have considered the objections raised by the assessee in response to the notice under section 148A(b) and should have disposed of it as mandated under section 148A(c). Court also held that since the income escaping assessment was less than Rs. 50 lakhs, section 149(1)(b) could not have been invoked. The assessee and his brother were joint owners of the inherited property with respective share of 50 per cent. each and both being joint vendors were entitled to equal share of the consideration amount of Rs. 32,68,000 each and this had been accepted by the Revenue. The reassessment proceeding initiated by the Department was barred by limitation and was beyond jurisdiction. Hence, the entire enquiry proceeding under section 148A, the order under section 148A(d) and the notice under section 148 were quashed. (AY. 2016-17)

Ratan Bej v. PCIT (2024)467 ITR 288 (Jharkhand)(HC)

S. 148A: Reassessment-Conducting inquiry, providing opportunity before issue of notice-Faceless Assessment-Violating principles of natural Justice-Failure to grant minimum of seven clear working days to respond to show-cause notice-Non-compliance with standard operating procedure-Matter remanded to faceless assessment unit to pass orders after considering reply of assessee. [S. 144, 144B(6)(vii), 147, 148, 148A(b), 148A(d), Art. 226] 2035

On writ the Court held that the assessee had given up her right to challenge the notice issued under section 148A(b), the order passed under section 148A(d) and the issuance of notice under section 148 by the jurisdictional Assessing Officer. The challenge was confined only to the show-cause notice proposing variation to the income and the order of assessment under section 147 read with sections 144 and 144B for the assessment year 2019-20. The show-cause notice had been issued on February 13, 2024 and the assessee was afforded an opportunity to respond by 17. 34 hours of February 20, 2024. Although, seven days had been provided, such notice had been digitally signed on February 13, 2024 at around 18. 37 hours and therefore, the assessee had not been afforded seven clear working days to respond to the notice. The notice was not in consonance with the Standard Operating Procedure, dated August 3, 2022 circulated

under the faceless assessment provision of section 144B by the Commissioner, National Faceless Assessment Centre. That the object of show cause was to offer an opportunity to respond. Under clause N. 1. 3 of the Standard Operating Procedure it had been provided that the principles of natural justice must be followed and in clause N. 1. 3. 1 thereof the response time for the show-cause notice had been prescribed as seven days. Though it had been stated that keeping in view the limitation date for completion of assessment, the response time could be curtailed, in the assessee's case limitation for completion of assessment proceeding had not intervened for not providing of seven clear days response time. A festival holiday coupled with the short response time had made it unviable for the assessee to offer response, within the specified time which constituted violation of principles of natural justice. Hence the assessment order, passed without considering the assessee's response, was set aside. The matter was remanded back to the Faceless Assessment Unit for considering the response of the assessee to be submitted within the stipulated time. (paras 9, 10)(AY. 2019-20)(SJ)
Sreelekha Banerjee v. Dy. CIT (2024)467 ITR 1 /300 Taxman 368 (Cal)(HC)

2036 **S. 148A: Reassessment-Conducting inquiry, providing opportunity before issue of notice-Non-Resident-Agreement bifurcating licence fee between live feed and recorded content-Receipt not Liable to tax in India-Notices and order is quashed. [S. 147, 148, 148A(b), 148A(d), Art. 226]**

Allowing the petition the Court held that clause D of the agreement between the assessee and the Indian entity, for the grant of telecast of matches, bifurcated the licence fee between live feed and recorded content. The view of the Assessing Officer that there was no basis for the bifurcation of the receipt in the ratio of 95 per cent. and five per cent. was perverse in view of the stipulations contained in the agreement. No contestation existed on the issue of taxability of live feed. There was no justification to recognize a right inhering in the Revenue to continue the reassessment proceedings under section 147. The initial notice issued under section 148A(b), the order passed under section 148A(d) and the notice issued under section 148 were quashed. (AY. 2016-17, 2017-18, 2018-19)
Trans World International LLC TWI v. Dy. CIT (IT) (2024)467 ITR 583 / 301 Taxman 530 (Delhi)(HC)

2037 **S. 148A: Reassessment-Conducting inquiry, providing opportunity before issue of notice-Death of assessee-Intimation of death to Department-Order and consequent notice issued in name of deceased assessee-Notice is void and invalid. [S. 147, 148, 148A(b), 148A(d), Art. 226]**

The late assessee filed his return of income for the assessment year 2017-18 on October 30, 2017. He died on September 30, 2020. By various letters and e-mails between December 16, 2020 and March 20, 2022, the Department was informed of the death of the assessee. The Assessing Officer issued a notice under section 148 of the Income-tax Act, 1961 on July 30, 2022 addressed to the deceased assessee and an order under section 148A(d) of the Act for issue of notice of reassessment was passed on July 30, 2022. On a writ allowing the petition the Court held that the order under section 148A(d) and the consequent notice issued under section 148 for reopening assessment

under section 147 for the assessment year 2017-18 were quashed and set aside. (AY. 2017-18)
Utpala Pradeep Jain v. Asst. CIT (2024)467 ITR 592 (Guj)(HC)

S. 148A : Reassessment-Conducting inquiry, providing opportunity before issue of notice-Limitation-Period of 10 years-Deposits in bank accounts-Assets-Foreign contribution-Writ petition is dismissed. [S. 148, 148A(b), 148A(d), 149, Art. 226] 2038
Dismissing the petition the Court held that the Explanation to S. 149 clarifies that 'deposits in bank accounts' form a part of the 'assets' of the assessee, and accordingly, in the considered opinion of this Court, the arguments advanced by the assessee qua the expiry of limitation under S. 149 in relation to the issuance of the impugned notice cannot be sustained as the income escaped assessment extends is higher than the minimum threshold of Rs. 50,00,000 enshrined under S. 149. Accordingly, the limitation vis-a-vis the initiation of reassessment proceedings in the case herein would resultantly extend to 10 years in light of the fact that the AO had in its possession inter alia books of accounts evidencing voluntary deposits in bank accounts extending to more than Rs. 50,00,000. (AY. 2016-17)
Enviornics Trust v. DCIT (2024) 339 CTR 113 (Delhi)(HC)

S. 148A: Reassessment-Conducting inquiry, providing opportunity before issue of notice-Limitation –Six days time was granted for giving reply as against the statutory minimum seven days-Natural justice-Limitation of three years-Opportunity of being heard-Information has been found recorded in the electronic books of accounts of a third party OMX Ltd-Writ petition is dismissed. [S. 148, 148A(b), 148A(d), 149(1)(b), Art. 226] 2039
The assessee challenged the notice under section 148 and order disposing the objection under section. 148A(d) of the Act. Dismissing the petition the Court held that there is no dispute that the information has been found recorded in the electronic books of accounts of a third party OMX Ltd. There is also no doubt that the said entries have been found recorded against the name of the assessee as the depositor. Assessee has not denied (either before the assessing authority or this Court) his ownership or rights or interest in the two properties. On an analysis done by the Revenue authorities, they have formed an opinion that the entries found recorded in the electronic books of accounts of OMX Ltd. are coded. Both with respect to date and quantum, there are deliberate alterations made to hide the true identity of the transactions. Prima facie, the quantum of escapement noted by Revenue authorities exceeds Rs. 8 crores. Therefore, the period of limitation would be governed by S. 149(1)(b). Further, the Writ Court may not remain over sensitive to the technical concern being voiced. Once opportunity has been actually and substantially availed on a realistic time scale, the Court is not inclined to set aside the order under s. 148A(d) dt. 6th March, 2024 passed by the assessing authority. The legislature has consciously widened the scope of assumption of jurisdiction to reassess any assessee. In the minimum, the objective test that was required to be satisfied under the pre-existing law by recording appropriate "reason to believe" has been done away. (AY. 2017-18)
Ravindra Pratap Shahi v. UOI (2024) 339 CTR 307 (All)(HC)

2040 **S. 148A: Reassessment-Conducting inquiry, providing opportunity before issue of notice-Second notice under section 148 was issued after first reassessment proceedings are finalized-No writ petition was filed against the original reassessment notice-Second reassessment proceeding is quashed. [S. 148, 148A(b), 148A(d), Art. 226]**

Court held that procedure laid out in *UOI v. Ashish Agarwal 2022) 326 CTR 473 / 213 DTR 217 (SC)* clearly stood confined to matters where although notices may have been issued, proceedings were yet to have attained finality. This clearly flows from the impugned notices being ordained to be treated as show-cause notices under S. 148A(b) and the concomitant liberty being accorded to AOs to proceed further in accordance with S. 148A(d). Supreme Court was faced with a peculiar and an unprecedented situation where the Revenue was rendered remediless to assess escaped income even though material may have merited such an action being pursued solely on account of a misinterpretation of the correct legal position. It was these factors which clearly appear to have weighed upon the Supreme Court to mould and sculpt a procedure which would strike a just balance between competing interests. Ashish Agarwal cannot possibly be read as mandating the hands of the clock being rewound and reversing final decisions which may have come to be rendered in the interregnum. Regard must also be had to the undisputed fact that the assessee never questioned the validity of the original notices on grounds which were urged before the various High Courts and where assessees had questioned the invocation of the unamended provisions. Accordingly there was no justification for the respondent to have issued notices afresh seeking to reopen proceedings which had been rendered a closure prior to the judgment rendered in Ashish Agarwal. Accordingly the notice and order disposing the objection is quashed. (AY. 2013-14)

Anindita Sengupta v. ACIT (2024) 338 CTR 641/ 161 taxmann.com 39 /467 ITR 627 (Delhi)(HC)

Editorial : Refer, UOI v. Rajeev Bansal (2024) taxmann.com [2024] 167 taxmann.com 70 / 340 CTR 865 (SC)

2041 **S. 148A: Reassessment-Conducting inquiry, providing opportunity before issue of notice-Notice in the name of deceased-Participated in the proceedings-Petition is dismissed on the ground that notice under S. 148A(b) was not in their names, subsequent orders and notice under S. 148A(b) and 148, respectively, cannot be passed and issued to them-The petitioners are granted 30 days further time from today to file return in pursuance to the notice under S. 148. [S. 147, 148, 148A(b), 148A(d), Art. 226]**

The first petitioner had filed reply to the show-cause notice under S. 148A issued in the name of his late father and was also heard. The notice under S. 148, which also was of the same date, i. e., 10th April, 2023, is in the names of late Naringaparambil Bhaskaran and the first petitioner, who is the son/legal heir of late Naringaparambil Bhaskaran. The petitioner filed the petition on the ground that the notice was in the name of deceased hence the order is bad in law. Dismissing the petition the Court held that the petitioners cannot take a stand that since the show-cause notice under S. 148A(b) was not in their names, subsequent orders and notice under ss. 148A(b) and 148, respectively, cannot be passed and issued to them. Since the first petitioner had already participated in the proceedings by not only filing reply to the show-cause notice but also having been

heard, this submission does not lie in the mouth of the petitioners and therefore, the same is liable to be rejected. The petitioners were not only aware of the proceedings, but also had participated in the proceedings. Therefore, the contention is rejected. The order dt. 10th April, 2023, passed s. 148A(d) would disclose that after considering the reply and submissions of the first petitioner, the AO is of the opinion that the assessment for the year 2019-20 is required to be reopened under S. 147 by issuing notice under S. 148 and that the proceedings under S 148 would continue in the hands of the legal heirs of the assessee. The petitioners are granted 30 days further time from today to file return in pursuance to the notice under S. 148. (AY. 2019-20)(SJ)
N. Binoj v. ITO (2024) 338 CTR 371 (Ker)(HC)

S. 148A: Reassessment-Conducting inquiry, providing opportunity before issue of notice-Information from the insight portal-Disputed question of fact-Order of single judge dismissing the writ petition is affirmed. [S. 148, 148A(b), 148A(d), Art. 226] 2042
Dismissing the petition the Court held that question whether there was a single transaction or two transactions in the relevant financial year or not is a disputed question of fact. Said question of fact cannot be adjudicated in a writ petition. Hence, the Single Judge was justified in remitting the matter to the respondent to pass fresh orders after hearing the assessee. (AY. 2016-17)
Dinesh Dinakaran Pillai v. ITO (2024) 338 CTR 476 (Ker) (HC)
Editorial : Dinesh Dinakaran Pillai v. ITO (2024) 338 CTR 478 / 237 DTR 35 (Ker) (HC), affirmed.

S. 148A: Reassessment-Conducting inquiry, providing opportunity before issue of notice-Information from the insight portal-Disputed question of fact-Writ petition is affirmed. [S. 148, 148A(b), 148A(d), Art. 226] 2043
Dismissing the petition the Court held that question whether there was a single transaction or two transactions in the relevant financial year or not is a disputed question of fact. Said question of fact cannot be adjudicated in a writ petition. Hence, the matter is respondent to pass fresh orders after hearing the assessee. (AY. 2016-17)
Dinesh Dinakaran Pillai v. ITO (2024) 338 CTR 478 /237 DTR 35 (Ker)(HC)
Editorial : Affirmed by division bench, Dinesh Dinakaran Pillai v. ITO (2024) 338 CTR 476 (Ker) (HC)

S. 148A : Reassessment-Conducting inquiry, providing opportunity before issue of notice –After four years-Limitation-Applicability of fifth proviso-Fifth proviso can only apply where one has to determine whether the time-limit of three years and ten years in S 149(1) are breached-Sixth proviso to S. 149 has no impact as it only provides a situation where after exclusion of the time period referred to in the fifth proviso, the time available with the AO for passing an order under S. 148A(d) is less than 7 days, then the remaining time frame shall be extended to 7 days and limitation also stands extended by 7 days-Revenue is seeking to exclude a period from 21st May, 2021 to 4th May, 2022-Which cannot apply-Hence, the notice dt. 31st July, 2022 is barred by limitation hence bad in law. [S. 148, 148A(b), 148A(d), 149(1), Art. 226] 2044
Court held that the first limb of the proviso only excludes the time frame between the date when the notice under S. 148A(b) is issued and the date granted to the assessee

to file its response. Based on assessee's facts, the show-cause notice under S. 148A(b) was issued on 24th May, 2022 asking assessee to furnish a reply by 8th June, 2022. Assessee filed a detailed reply in response to the show-cause notice on 8th June, 2022 and, therefore, only the period from 24th May, 2022 to 8th June, 2022 could be excluded by virtue of the first limb of the fifth proviso to S. 149. Subsequently, assessee received another letter dt. 28th June, 2022 which annexed certain details and provided further time for making detailed submissions upto 8th July, 2022. Even assuming a period of 27 days (i. e., 16 days from 24th May to 8th June and 11 days from 28th June to 8th July) are excluded from the date of the notice under S. 148 issued on 31st July, 2022, the notice would yet be barred by limitation and could not have been issued by virtue of the first proviso to S. 149. Court also held that the validity of a notice must be judged on the basis of the law existing as on the date on which the notice is issued under S 148, which in the present case is 31st July, 2022, by which time the Finance Act, 2021 is already on the statute and in terms thereof, no notice under s. 148 for asst. yr. 2014-15 could be issued on or after 1st April, 2021 based on the first proviso to s. 149. Therefore, the fifth proviso cannot apply in a case where the first proviso applies because, if a notice under S. 148 could not be issued beyond the time period provided in the first proviso, then the fifth proviso could not save such notices. Fifth proviso can only apply where one has to determine whether the time-limit of three years and ten years in S. 149(1) are breached. Sixth proviso to S. 149 has no impact as it only provides a situation where after exclusion of the time period referred to in the fifth proviso, the time available with the AO for passing an order under S. 148A(d) is less than 7 days, then the remaining time frame shall be extended to 7 days and limitation also stands extended by 7 days. Revenue is seeking to exclude a period from 21st May, 2021 to 4th May, 2022 relying on *UOI v. Ashish Agarwal (2022) 326 CTR 473 / 213 DTR (217 (SC)* which cannot apply. Accordingly the impugned notice dt. 31st July, 2022 is bad in law. Followed *New India Assurance Co. Ltd. v. ACIT (2024) 337 CTR 257 / 235 DTR 113 (Bom)(HC)* (AY. 2014-15)

Godrej Industries Ltd. v. ACIT (2024) 338 CTR 25 / 160 taxmann.com 13 / 470 ITR 628 (Bom) (HC)

2045 **S. 148A: Reassessment-Conducting inquiry, providing opportunity before issue of notice-Case covered by the provisions of S. 132A-Application under Section 451 of Cr. P. C. -Requisitioned from Police Station-Procedure contemplated by the provisions of s. 148A need not be complied with before issuing notices under S. 148. [S. 132, 132A, 148, 148A(b), 148A(d), Cr. P. C. S. 451, Art. 226]**

The petitioner challenged the notice issued under section 148 of the Act on the ground that the provisions of Section 148A has not been complied with on the ground that Department has made an application under Section 451 of Cr. P. C. Dismissing the petition the Court held that the Department had requisitioned under S. 132A the amount from the Police Station, and it was only after being informed that the amount had been produced in Court that an application under S. 451 Cr. P. C was filed. Therefore, the procedure contemplated by the provisions of S. 148A need not be complied with before issuing notices under S. 148 of the Act. Followed, *R. Ravirajan & Ors. v. State of Kerala 2023 (4) KLJ 423* followed. (AY. 2020-21 to 2023-24)(SJ)

Muhammed C. K. v. ACIT (2024) 338 CTR 367 (Ker) (HC)

S. 148A: Reassessment-Conducting inquiry, providing opportunity before issue of notice-Notices issued on or after 1-4-2021 relating to assessment years 2013-14 and 2014-15, under section 148 (old)-Treating the same as under newly inserted section 148A by Finance Act, 2021 which came into effect from 1-4-2021-Notice and all subsequent proceedings on the basis of said notices are not sustainable in law being barred by limitation as provisions of TOLA applied to pre-amended law as applicable till 31-3-2021. [S. 148, 148A(b), 148A(d), 149, Art. 226, Taxation and Other Laws (Relaxation and Amendment of certain Provisions) Act, 2020] 2046

Allowing the petition the Court held that since provisions of Taxation and Other Laws (Relaxation and Amendment of certain Provisions) Act, 2020 applied to pre-amended law as applicable till 31-3-2021 and erstwhile regime of section 148 (applicable up to 31-3-2021) had been repealed by Parliament without any savings and exception clause and was substituted with an altogether new regime vide Finance Act, 2021 with effect from 1-4-2021, notices issued on or after 1-4-2021, relating to assessment years 2013-14 and 2014-15, under section 148 (old) by converting/treating same as under newly inserted section 148A by Finance Act, 2021 which came into effect from 1-4-2021 and all subsequent proceedings on basis of aforesaid notices would not be sustainable in law and are quashed and all legal consequences will follow automatically. Accordingly all the notices issued under S. 148A(b) by the Finance Act, 2021, relating to assessment years 2013-14 and 2014-15, which have been issued on or after Ist April 2021 by extending the time of limitation y the CBDT for issuance of notice under section 148 in exercise of power under S. 3 of TOLA is unauthorised in law and all such notices are barred by limitation and all subsequent proceedings on the basis of the said notices are not sustainable in law. (AY. 2013-14, 2014-15) (SJ)

Arati Marketing (P.) Ltd v. UOI (2024) 337 CTR 137 / 159 taxmann.com 322 (Cal) (HC)
Instyle Agencies (P) Ltd v. ITO (2024) 337 CTR 137 / 159 taxmann.com 322 (Cal) (HC)

S. 148A : Reassessment-Conducting inquiry, providing opportunity before issue of notice-Defects in the notice-Curable defects-The body of the annexure to the notice under S. 148A(b) there is a reference of some transaction relating to financial years 2017-18 and 2018-19 and that it is incurable defect and it cannot be cured is not sustainable-Writ petition is dismissed. [S. 148, 148A(b), 148A(d), Art. 226] 2047

Dismissing the petition the Court held that notice under S. 148A(b) for asst. yr. 2016-17 itself was illegal since in the body of the annexure to the impugned notice under S 148A(b) there is a reference of some transaction relating to financial years 2017-18 and 2018-19 and that it is incurable defect and it cannot be cured is not sustainable. (AY. 2016-17)(SJ)

Champa Impex (P) Ltd. v. UOI (2024) 337 CTR 365 (Cal) (HC)
Editorial : Affirmed by division bench, Champa Impex (P.) Ltd. v. UOI (2024) 297 Taxman 336 /337 CTR 356 (Cal.)(HC)

2048 **S. 148A : Reassessment-Conducting inquiry, providing opportunity before issue of notice-Cash deposits-Information has been received through insight portal regarding cash deposits, interest receipts, purchase of debentures, etc-No tangible material placed by the AO to show that there was escapement of income from the payment of income-tax-Order and notice is quashed and set aside. [S. 148,148A(b), 148A(d) Art. 226]**

Assesse was issued abstand that credible information has been received through insight portal regarding cash deposits, interest receipts, purchase of debentures, etc Annexure to the notice is an extract of the relevant particulars which find place in the return of income filed by the assessee for the relevant assessment year In the impugned order passed under s. 148A(d) there are glaring omissions and more particularly the condition precedent for exercise of the power of reopening the assessment are conspicuously absent-Though the order appears to be an elaborate order, the conclusion is only in one paragraph-For the purpose of reopening an assessment there should be a tangible material placed by the AO to show that there was escapement of income from the payment of income-tax-This being conspicuously absent as could be seen from the annexure to the show-cause notice the reopening proceedings have to be held to be bad in law-Therefore, order passed under s. 148A(d) and the consequential notice under 148 are quashed. (AY. 2017-18)

Dinesh Kumar Goyal (HUF) v. ITO (2024) 337 CTR 592 / 161 taxmann.com 584 (Cal) (HC)

Editorial : Dinesh Kumar Goyal (HUF) v. ITO (2024) 337 CTR 595/ 235 DTR 316(Ca) (HC) is set aside; Shyam Sundar Dhanuka v UOI (APOT No. 187 of 2023, dt 30th Aug., 2023 (Cal)(HC)) distinguished

2049 **S. 148A : Reassessment-Conducting inquiry, providing opportunity before issue of notice-Violation of principle of natural justice-Non-speaking order-No procedural irregularities-Writ petition is dismissed. [S. 148, 148A(b), 148A(d), Art. 226]**

Dismissing the petition the Court held that the AO having passed the impugned order under s. 148A(d) by making detailed discussion and by a speaking order based on facts and evidence, the contention of the assessee that it is not satisfied with the reasoning and finding of the AO cannot be a ground for interference with the same in the writ proceeding. (AY 2017-18)

Dinesh Kumar Goyal (HUF) v. ITO (2024) 337 CTR 595 / 235 DTR 316 / 235 DTR 316 (Cal)(HC)

Editorial : Order of single judge is set aside, Dinesh Kumar Goyal (HUF) v. ITO (2024) 337 CTR 592 (Cal) (HC)

2050 **S. 148A: Reassessment-Conducting inquiry, providing opportunity before issue of notice-Earlier notice under S 148 was quashed-have been quashed-Not complied with the amended provision of S. 148A inserted by the Finance Act. 2021-Revenue had to proceed from the stage of S. 148A(b), on dispensation of inquiry as directed by the Supreme Court in *UOI v. Ashish Agarwal (2022) 326 CTR 473 / 213 DTR 217 (SC)*-Assessee had right to reply to the show-cause, consideration of which may have led to an order passed under S. 148A(d), for issuance of notice under S. 148 subsequent thereto-Notices and assessment order are quashed. [S. 148, 148A(b),148A(d), Art. 226]**

Allowing the petition the Court held that Co-ordinate Bench had set aside and quashed both notices respectively dt. 31st March, 2021 and 8th April, 2021, issued under s. 148.

Revenue was left to proceed in accordance with law. Revenue did proceed. However, in issuing show-cause notice for effecting the variation, Revenue did not comply with the amended provision of S. 148A inserted by the Finance Act, 2021. Keeping in mind that the earlier notices under s. 148 were quashed, in the facts and circumstances Revenue had to proceed from the stage of S. 148A(b), on dispensation of inquiry as directed by the Supreme Court in *UOI v. Ashish Agarwal (2022) 326 CTR 473 / 213 DTR 217(SC)*, the assessee had right to reply to the show-cause, consideration of which may have led to an order passed under S. 148A(d), for issuance of notice under S. 148 subsequent thereto. The assessee would then have had to comply on filing return for the reassessment. This procedure was not followed. Impugned show-cause notice dt. 3rd May, 2023, assessment order dt. 12th May, 2023 and demand also dt. 12th May, 2023 are set aside and quashed. The reservation by said judgment dt. 18th Nov., 2022, in para 12 thereof is reiterated for Revenue to move in accordance with law. For purposes of moving forward with the reassessment, Revenue has to issue fresh notice under S. 148A(b). This is because the earlier notices issued stood quashed by Co ordinate Bench and, therefore cannot be said to be notices deemed to have been issued under S. 148A. Accordingly the notices and orders are quashed. (AY. 2015-16, 2016-17)
Sylvesa Infotech (P) Ltd v. AO (2024) 337 CTR 132 (Orissa)(HC)

S. 148A : Reassessment-Conducting inquiry, providing opportunity before issue of notice-Time granted to respond to notice lesser than prescribed seven days-Opportunity of personal hearing not granted-Notices and order set aside. [S. 147, 148, 148A(b). 148A(d), 151A, Art. 226] 2051

Allowing the petition the Court held that despite the assessee's making a request, opportunity of personal hearing had not been afforded to the assessee and a period of five days time which was lesser than the prescribed seven days was given to the assessee to respond to the show-cause notice issued under section 148A(b). The matter remanded back to the jurisdictional Assessing Officer for a decision afresh. Accordingly, the order under section 148A(d) and the consequent notice issued under section 148 for reopening of the assessment under section 147 for the assessment year 2017-18 were set aside(AY. 2017-18)
Anup Kumar Agarwal v. UOI (2024)466 ITR 494 /300 Taxman 321 (Cal)(HC)

S. 148A: Reassessment-Conducting inquiry, providing opportunity before issue of notice-Sanction for notice issued by Income-Tax Authority which did not have jurisdiction-Notice is not Valid. [S. 147, 148, 151, Art. 226] 2052

Held, that as per section 151 of the Income-tax Act, 1961, and considering the fact that the reopening of the case was occurring after a lapse of more than three years, the appropriate authority for issuance of the notice under sections 148 and 148A(b) of the Act should have been either the Principal Chief Commissioner or Principal Director General, or in their absence, the Chief Commissioner or Director General, instead of the Principal Commissioner of Income-tax, who did not fall within the specified authorities outlined in section 151 of the Act. Hence the notice of reassessment dated May 26, 2022 and July 30, 2022 and the order dated July 30, 2022, for the assessment year 2017-18 is quashed. (AY. 2017-18)
Ashok Kumar Makhija v. UOI (2024)466 ITR 283 /162 taxmann.com 514 (Delhi)(HC)

2053 **S. 148A : Reassessment-Conducting inquiry, providing opportunity before issue of notice-Limitation-Bar Of Limitation-Initiation of proceedings from 1-4-2021-Notice issued beyond period of limitation of six years-Notice and order is quashed and set aside. [147, 148, 148A(d), 149, Art. 226]**

On a writ petition challenging the validity of the reassessment proceedings under section 147 of the assessment year 2016-17, on the statutory prescription of limitation under section 149 as amended by the Finance Act, 2021 ([2021] 432 ITR (St.) 52), by issuance of notice dated April 29, 2024 under section 148 pursuant to the Supreme Court decision in *UOI v. Ashish Agarwal ((2022)444 ITR 1 (SC),* allowing the petition, that the notice issued under section 148 in order to be sustained when tested on the anvil of the pre-amendment to section 149(1)(b), would have to meet the prescription of six years period of limitation and that period in respect of the assessment year 2016-17 had ended on March 31, 2023. Therefore, the reassessment proceedings which was commenced pursuant to the notice under section 147, dated April 29, 2024, was unsustainable. The Assessing Officer did not attempt to sustain the initiation of action on any other statutory provision which could be read as extending the time limit that applied. The order under section 148A(d) and the consequential notice issued under section 148 were quashed and set aside. (AY. 2016-17)

Manju Somani v. ITO (2024)466 ITR 758/300 Taxman 516/340 CTR 946 / 242 DTR 241 (Delhi)(HC)

2054 **S. 148A : Reassessment-Conducting inquiry, providing opportunity before issue of notice-Limitation-Amendment of Section 151 with effect from 1-4-2021-Issue of notice in respect Of Assessment years 2016-17 and 2017-18 notice is not valid-Interpretation of taxing statutes-Proviso. [S. 147, 148, 149(1), 151, Art. 226]**

Held, that since the disputes pertained to the assessment years 2016-17 and 2017-18, the proviso to section 149(1) applied to the cases. As a consequence, the time limit specified in the preamended section 149(1)(b) was applicable and the time limit prescribed therein was four years and not more than six years. Clause (ii) of section 151 was applicable and, in terms thereof, the specified authorities were the Principal Chief Commissioner or Principal Director General or Chief Commissioner or Director General. The orders under section 148A(d) were issued with the prior approval of the Commissioner (International Taxation). The validity of sanction for issuing the orders under section 148A(d) and the notices under section 148 should be tested with reference to amended section 151. If so tested, it was evident that sanction was not granted by an authority specified under clause (ii) of section 151. Hence, the orders under section 148A(d) and the notices under section 148 were liable to be quashed. As a corollary, the draft assessment orders under section 144B / 144C could not survive and had also to be quashed. Finance Act, 2021 ([2021] 432 ITR (St.) 52) (AY. 2016-17, 2017-18)

Ramachandran Shivan v. ITO (2024)466 ITR 305 (Mad)(HC)

S. 148A: Reassessment-Conducting inquiry, providing opportunity before issue of notice-Alternative remedy –Appeal is dismissed-Order of single judge is affirmed. [S. 148A(b), 148A(d), 148, 246A, Art. 226] 2055

Assessee filed writ petition challenging reassessment order passed under section 147. On writ the Single Bench held that since Assessing Officer passed order setting out certain reasons and to test correctness of those reasons facts had to be gone into much of which were being disputed by assessee,, the Writ petition was dismissed. On appeal the Court held that the Single Bench was justified in holding that reassessment order being an appellate order, same could be challenged before Appellate Authority and in relegating assessee to avail alternative remedy. (AY. 2014-15)

Ananda Bag Tea Company Ltd. v. UOI (2024)160 taxmann.com 675 / 336 CTR 824 (Cal) (HC)

Editorial : Ananda Bag Tea Company Ltd. v. UOI (2024) 336 CTR 827/ 234 DTR 236 (Cal)(HC), order of Single Bench is affirmed.

S. 148A : Reassessment-Conducting inquiry, providing opportunity before issue of notice-Alternative remedy-Finding of fact-Alternative remedy-Writ petition is dismissed. [S. 148A(b), 148A(d), 148, Art. 226] 2056

Assessee filed writ petition challenging reassessment order passed under section 147. Dismissing the petition the Court held that since Assessing Officer passed order setting out certain reasons and to test correctness of those reasons facts had to be gone into much of which were being disputed by assessee, the Writ petition was dismissed. As the assessee has alternative remedy. (AY. 2014-15) (SJ)

Ananda Bag Tea Company Ltd. v. UOI (2024) 336 CTR 827/ 234 DTR 236 (Cal)(HC)

Editorial : Ananda Bag Tea Company Ltd. v. UOI (2024)160 taxmann.com 675 / (2024) 336 CTR 824 (Cal) (HC), Division Bench affirmed the order of Single Bench.

S. 148A : Reassessment-Conducting inquiry, providing opportunity before issue of notice-Show cause notice-Principle of natural justice-Service of show cause notice by itself did not tantamount to a discharge of obligation to provide assessee with an opportunity of being heard-Opportunity to be effective must include a right to a personal hearing as well-Order of Single Judge is affirmed. [S. 148A(b), 148A(d), 148, Art. 226] 2057

Assessing Officer issued on assessee a notice under section 148A(b) calling upon it to show cause as to why a notice under section 148 should not be issued. Assessee filed reply to show cause notice Assessing Officer without affording assessee an opportunity of heard passed order in terms of section 148A(d) and consequently issued notice under section 148. On writ the Revenue contended before High Court that so long as show cause notice envisaged under section 148A was issued to assessee, opportunity of being heard was to be seen as provided. Allowing the petition the Court held that service of show cause notice under section 148A(b) is only first step in process of extending an opportunity of being heard to assessee and thus, service of show cause notice by itself did not tantamount to a discharge of obligation to provide assessee with an opportunity of being heard. Notice is set a side and directed to pass speaking order after giving a reasonable opportunity of being heard. On appeal by Revenue dismissing the appeal the

Court held that opportunity to be effective must include a right to a personal hearing as well. (AY. 2019-20)
ITO v. Asamannoor Service Co-operative Bank Ltd (2024)160 taxmann.com 681 / 336 CTR 625 (Ker) (HC)
Editorial : Asamannoor Service Co-operative Bank Ltd v. ITO (2024) 336 CTR 631 (Ker)(HC) is affirmed.

2058 **S. 148A : Reassessment-Conducting inquiry, providing opportunity before issue of notice-Principle of natural justice-Opportunity of hearing-Order and notice is set aside. [S. 148, 148A(b), 148A(d), Art. 226]**
Allowing the petition the Court held that S. 148A(b) begins with provide an opportunity of being heard to the assessee. Hearing does not mean filing reply to the show-cause notice. If the provision of this section contemplates opportunity of being heard that has to be construed as personal hearing. Therefore, there is no substance in the submission of Revenue's counsel that an opportunity of being heard to the assessee contemplated under s. 148A(b) does not necessarily mean personal hearing. Court held that opportunity of being heard under s. 148A(b) means an opportunity of personal hearing to the assessee. On facts no such opportunity of being heard was given to the assessee before passing order and issuing notice. Order and notice are unsustainable. The notice and order is set aside. The assessee is directed to appear before the respondent on or before 27th Oct., 2023 with all the relevant document in his possession of being heard. After considering the submission of the assessee, the AO is required to pass a fresh order, and thereafter, proceed with the matter. (AY. 2019-20)
Asamannoor Service Co-Operative Bank Ltd. v. ITO (2024) 336 CTR 631 (Ker)(HC)
Editorial : Affirmed by Division Bench, ITO v. Asamannoor Service Co-operative Bank Ltd (2024)160 taxmann.com 681 / 336 CTR 625 (Ker) (HC)

2059 **S. 148A : Reassessment-Conducting inquiry, providing opportunity before issue of notice-Supply of information-Information/description has been given to the assessee-Writ petition is dismissed. [S. 148, 148A(b), 148A(d), Art. 226]**
On the facts the jurisdictional authority along with notice dt. 13th March, 2023 under s. 148A(b) has supplied information available with it with the documents such as insight portal, wherein information/description has been given. In the notice dt. 13th March, 2023 under s. 148A(b) and the order dt. 28th March, 2023 under s. 148A(d) issued by the AO, it is clearly mentioned that in the insight portal, the case of the assessee is flagged on "High Risk CRIU/RU PAN case for the relevant assessment year. Case of the assessee is covered by information specified in Expln. 1(i) of s. 148. It is not the case of the assessee that information disclosed vide notice under s. 148A(b) is not covered by the information specified in Expln. 1(i) of S Writ petition is dismissed. (AY. 2019-20)
Chaturbhuj Gattani v. ITO (2024) 336 CTR 369 (Raj) (HC)
Saroj Gattani v. ITO (2024) 336 CTR 369 (Raj) (HC)

S. 148A: Reassessment-Conducting inquiry, providing opportunity before issue of notice-Information from insight portal that assessee had transacted with Mutual Fund found to be involved in scam-No nexus between belief and material-Reassessment notice and order disposing the objection is quashed-Court can examine relevancy of recorded reasons in writ jurisdiction. [S. 147, 148, 148A(b), 148A(d), Art. 226] 2060

Allowing the petition the Court held that the assessee was himself a victim of the alleged fraud of the mutual fund and was again being victimised by the Assessing Officer. Even in the order under section 148A(d) wherein it was mentioned that statement of the key management personnel of the mutual fund was recorded, there was nothing to indicate that the assessee was part of the alleged sham mutual fund. The assessee was not a distributor and was only a client. The allegation in the initial notice issued under section 148A(b) that the assessee was one of the persons who had claimed fictitious short-term capital loss was without any basis. The assessee had, based on public announcement, invested in the mutual fund. The receipt of tax free dividend fund and the fact that the assessee had suffered a loss could not be held against the assessee. Even assuming that the transaction was preplanned, there was nothing to impeach the genuineness of the transaction. The assessee was free to carry on his business which he did within the four corners of the law. Mere tax planning without any motive to evade taxes through colourable devices was not frowned upon even in *Mcdowell and Co. Ltd. v. Commercial Tax Officer (1985) 154 ITR 148(SC), CIT v. Walfort Share and Stock Brokers (P) Ltd(2010) 326 ITR 1 (SC)*. Court also observed that the Assessing Officer's allegations in the notice issued under section 148A(b), that the mutual fund had manipulated accounting methodology so as to artificially inflate the distributable surplus and the investors, in order to reduce their tax liability, had entered into sham transactions and received dividend and short-term capital loss, did not implicate the assessee in any manner. There was nothing to indicate that the assessee had participated knowingly in a sham transaction to reduce his tax liability or to earn dividend or book short-term capital loss. The Assessing Officer was also not clear whether the assessee had booked loss or claimed dividend in the mutual fund which indicated non-application of mind by the Assessing Officer. The initial notice under section 148A(b), the order passed under section 148A(d) and the notices under section 148 were therefore, quashed and set aside. (AY. 2016-17)

Karan Maheshwari v. ACIT (2024)465 ITR 232 (Bom)(HC)

S. 148A: Reassessment-Conducting inquiry, providing opportunity before issue of notice-Notice issued on the ground of non filer of return of income-Return was filed and refund was granted-Notice and order is quashed. [S. 139, 143(1), 147, 148, 148A(b), 148A(d), 149, 151, Art. 226] 2061

Allowing the petition the Court held that the order passed under section 148A(d) was unsustainable because the initial notice issued under section 148A(b) did not call upon the assessee to provide any justification on any transaction in question. The entire basis for issuing the notice under section 148A(b) was that the assessee was a non-filer for the assessment year 2019-20 and that since he had failed to file the return of income, the income from salary and purchase of securities had not been declared or offered for taxation. But the fact was that the assessee had filed his return of income, had paid

tax and had also claimed refund. Therefore, the order under section 148A(d) and the consequential notice issued under section 148 for reopening the assessment under section 147 were quashed and set aside. Court also held that even the notice under section 148A(b) was unjustified because, in terms of the guidelines dated August 1, 2022 before issuing the notice under section 148, the Assessing Officer was bound at least to verify or enquire following the information that was received in accordance with the Risk Management Strategy. If the Assessing Officer had verified in the portal of the assessee before initiating proceedings, when he had the permanent account number with him, he would have realised that not only had the assessee filed the return of income, but also that it had been processed and an order under section 143(1) had been passed. Therefore, the initial notice issued under section 148A(b) was also quashed and set aside. (AY. 2019-20)

Narendra Kumar Shah v. ACIT (2024)465 ITR 385/162 taxmann.com 397 (Bom)(HC)

2062 **S. 148A : Reassessment-Conducting inquiry, providing opportunity before issue of notice-Settlement Commission-Settlement of cases-Reassessment-Order passed by way of settlement of case is conclusive-Order cannot be reopened except in case of fraud or misrepresentation-Issues considered by Settlement Commission-Re assessment notice is not valid. [S. 147, 148, 148A(b), 148A(d), 245D(4), 245D(6), 245D(7), 245H, 245I, Art. 226]**

Allowing the petition the Court held that the issues pertaining to the valuation of work-in-progress as well as disallowance of interest were considered at the stage of proceedings before the Settlement Commission, which had recorded the findings in its final order dated September 16, 2016. Therefore, the contention raised by the Principal Commissioner that the escapement of income was not brought to the notice of the Settlement Commission, was not justified. Additionally, it could be seen that both the issues did not form the subject matter of the challenge against the final order of the Settlement Commission as they were concerned with (i) granting immunity from penalty and prosecution under section 245H of the Act and (ii) granting waiver of interest under section 234A of the Act. Hence the notice under section 148A was not valid. Referred, *Brij Lal v. CIT (2010) 328 ITR 477 (SC)* wherein the Court held that the finality of the order of the Settlement Commission emanates from section 245-I of the Income-tax Act, 1961 which envisages that every order of settlement passed under sub-section (4) of section 245D shall be conclusive as to the matters stated therein and no matter covered by such order shall, save as otherwise provided in Chapter XIX-A of the Act, be reopened in any proceeding under this Act or under any other law for the time being in force. (AY. 2007-08)

Orchid Infrastructure Developers Pvt. Ltd. v. PCIT (2024)465 ITR 591/161 taxmann.com 673 /338 CTR 1 (Delhi)(HC)

S. 148A: Reassessment-Conducting inquiry, providing opportunity before issue of notice-Death of assessee-Intimated to Department-Proceedings for earlier assessment years dropped for reason that notices issued against dead person invalid-Notice and proceedings void ab initio-Notices and orders set aside. [143, 147, 148, 148A(b), 148A(d), Art. 226] 2063

Allowing the petition the Court held that the reassessment proceedings could not be initiated under section 147 since the notices under section 148 were issued against a deceased person. The petitioner, legal heir, had already intimated the Department about the death of the assessee and yet the Assessing Officer had proceeded to reopen the assessment of the assessment year 2013-14 under section 147. The course as adopted was clearly reflective of complete non-application of mind. That for the earlier assessment years, 2010-11 and 2012-13 the Department had already dropped the proceedings on the premise that the notices under section 148 were issued against a deceased person. Therefore, on the yardstick of the principle of consistency, the Department ought not to have proceeded to initiate action under section 147 for the assessment year 2013-14, especially when there was no alteration in the facts as compared to the earlier two assessment years. Accordingly, the notices issued under section 148A(b), the order passed under section 148A(d), the notice issued under section 148 and the assessment order passed under section 147 read with section 143, for the assessment year 2013-14, were set aside and quashed. (AY. 2013-14)

Pradeep Jain v. ITO (2024) 465 ITR 399 /164 taxmann.com 284 (Delhi)(HC)

S. 148A : Reassessment-Conducting inquiry, providing opportunity before issue of notice-Search-Assessment of third person-Reassessment based on incriminating material and information collected prior to and post search-Permissible only under Section 153C-Reassessment cannot be made under Section 147-Notices and orders set aside. [S. 132, 147, 148, 153A, 153C, Art. 226] 2064

Allowing the petition the Court held that the information as contained in the annexure to the notice and the order passed in exercise of powers under section 148A(d) of the Act made it clear that the entire basis for reopening the assessment was nothing but the material and information collected during search conducted in the premises of another assessee. Collection of details relating to search would not mean collection of new incriminating material and information, independent of the incriminating material and information collected during search proceedings. The earlier notice, dated March 31, 2021, issued under section 148 merely stated that the Assessing Officer had reasons to believe that the income chargeable to tax for the assessment year 2016-17 had escaped assessment under section 147. The later notice, dated June 2, 2022, issued under section 148A(b) pursuant to the decision in *UOI v. Ashish Agarwal (2022) 444 ITR 1 (SC)*, it was stated that there was information pertaining to the assessee which suggested that income chargeable to tax for the assessment year 2016-17 had escaped assessment under section 147. The notice clearly showed that incriminating material and information was found during the search proceedings and not beyond that and to assume jurisdiction under section 148A such information was made a basis to draw inferences which were described as pre search and post search investigations. It had been assumed that the incriminating material and information collected during search

followed by collection of details which were intrinsically related to such material and information would confer jurisdiction under section 147. That the Department had the authority to reopen the assessment by invoking the powers under section 153C and draw reassessment proceedings under section 153A. That was not done within the period of limitation prescribed under section 153B. The Department was fully aware of the fact that proceedings under section 153C would be barred by limitation, and therefore, recourse was taken to the provisions under section 148 and section 148A which had no application in the assessee's case. The orders passed for the assessment years 2016-17 and 2017-18 were unsustainable and accordingly, quashed and set aside. (AY. 2016-17, 2017-18)
Tirupati Construction Co. v. ITO (2024)465 ITR 611 /165 taxmann.com 176 (Raj)(HC)

2065 **S. 148A: Reassessment-Conducting inquiry, providing opportunity before issue of notice-Ex-parte order-If debits considered escapement of income would be within threshold limit of Rs. 50 Lakhs-Opportunity of hearing is not given-Assessment order and notices are quashed and set aside. [S. 147, 148, 148A(b), 148A(d), Art. 226]**
Allowing the petition, the Court held that Department had proceeded ex parte because the assessee had not replied to the notice under section 148A(b) or participated in the reassessment proceedings under section 147. The aggregate deposits had been taken into consideration. The assessee had contended that the debits from bank account were not taken into consideration and that if such debits were considered, the alleged escapement of income would be less than the prescribed minimum threshold of Rs. 50 lakhs. Since the assessee could not contest the matter on the merits earlier, the assessee should be provided an opportunity of hearing. Thereafter a fresh order could be passed. The assessment order and the notice of penalty were set aside and the matter was remanded to the Assessing Officer. Matter remanded. (AY. 2015-16))
Vijayakumar v. ITD (2024)465 ITR 396 (Mad)(HC)

2066 **S. 148A: Reassessment-Conducting inquiry, providing opportunity before issue of notice-Prima facie material to indicate escapement of income from assessment-Objection of assessee considered-Order and notice is valid. [S. 148A(b), 148A(d), 148, Art. 226]**
Dismissing the petition the Court held that the Department had received information that the value of land, which was subject matter of transaction of sale, was far more than what had been disclosed. Therefore, on the face of it, it was a case where the Department had collected certain information regarding certain income having escaped assessment. Whether or not the information was reliable, would be required to be examined at subsequent stages and at this stage, the court would not go into the disputed questions of fact. The assessee had not alleged procedural impropriety, irregularity or violation of statutory provisions in the matter of initiation of proceedings or passing of the order under section 148A(d). The order and consequential notice of reassessment were valid.
Laxmi Meena v. UOI [2024] 464 ITR 208 (Raj)(HC)

S. 148A: Reassessment-Conducting inquiry, providing opportunity before issue of notice-Sanction-Non application of mind-Discrepancy in quantum of escapement of income-Order and consequent notice is set aside. [S. 147, 148, 148A(b), 148A(d), 151, Art. 226] 2067

Allowing the petition, the Court held that the contention that the record had been carefully considered before granting approval under section 151 was an incorrect statement made by the Principal Chief Commissioner. The information annexed to the notice issued under section 148A(b) had stated the quantum of income that had escaped assessment more than the amount mentioned in the order passed under section 148A(d) without any explanation as to how the amount had changed or had been reduced. In the affidavit, it was stated that in the notice the value of the transaction in question was taken gross and subsequently it was seen that there were duplicate entries which were corrected while passing the order under section 148A(d). The notice did not contain any duplicate entries. If there were duplicate entries, the Assessing Officer was duty bound to clarify in the order and also give details of what were those duplicate entries and should have come clean on the error made. If the Principal Chief Commissioner or the other officers had seen the records and had applied their mind, those errors would not have crept in. This displayed non-application of mind by all those persons who had endorsed their approval for issuance of notice under section 148. Had the authorities read the record carefully, they would never have come to the conclusion that this was a fit case for issuance of notice under section 148 and would have either told the Assessing Officer to correct the amounts or would have sent the papers back for reconsideration. They had substituted the form for substance, important safeguards provided in sections 147 and 151 were treated lightly by the concerned officers. The order of approvals under section 151, having been granted mechanically and without application of mind in a most casual manner, were quashed and set aside. The order passed under section 148A(d) and the consequent notice issued under section 148 were also quashed and set aside. (AY.)

Vodafone India Ltd. v. Dy. CIT (2024) 464 ITR 385 (Bom)(HC)

S. 148A: Reassessment-Conducting inquiry, providing opportunity before issue of notice-Principle of natural justice-Opportunity of personal hearing requested in reply to Initial show-cause notice not given-Reassessment notice and order disposing the objection is quashed and set aside. [S 148A(b), 148A(d), Art. 226] 2068

On a writ petition challenging the order under section 148A(d) of the Income-tax Act, 1961 for the assessment year 2019-20, on the ground of violation of principles of natural justice since the assessee was denied the requested opportunity of personal hearing requested in response to the show-cause notice under section 148A(b), Court held that the Assessing Officer had neither rejected nor had recorded any reasons for not considering the assessee's request for personal hearing in its response to the show-cause notice under section 148A(b). Without going into the merits, the order under section 148A(d) and all subsequent proceedings were to be set aside on the ground of violation of principles of natural justice. The matter was remanded back to the Assessing Officer to pass a fresh order under section 148A(d) after giving opportunity of personal hearing and considering the objections filed by the assessee. Matter remanded. (AY. 2019-20)

Winsome Highrise Pvt. Ltd. and Another v. UOI (2024) 464 ITR 101 (Cal)(HC)

2069 **S. 148A: Reassessment-Conducting inquiry, providing opportunity before issue of notice-Jurisdiction-Notice issued under existing law and reassessment order passed becoming final-Notice issued under section 148A pursuant of direction of Supreme Court in UOI v. Ashish Agarwal (2022) 444 ITR 1(SC)-Notice is without jurisdiction hence quashed. [S. 147, 148, 148A(b), 148A(d), Art. 226]**

The assessee was originally assessed to tax under section 143(3) of the Income-tax Act, 1961 for assessment year 2017-18 by an assessment order dated May 29, 2019. Thereafter, assessee received a reassessment notice dated March 31, 2021 issued under section 148 of the Act. The assessee participated in the reassessment proceeding and a reassessment order dated March 28, 2022 was passed by the Assessing Officer. The assessee did not challenge it and it attained finality. A second reassessment notice for the assessment year 2017-18 dated July 30, 2022 was issued invoking section 148A of the Act. On a writ petition, allowing the petition, that there could exist only one assessment order for an assessee for one assessment year. Since the reassessment order had already been passed on March 28, 2022 for the assessment year 2017-18, there was no proceeding pending to have been influenced or affected or governed by the order of the Supreme Court dated May 4, 2022 in *UOI v. Ashish Agarwal (2022) 444 ITR 1 (SC)*. In the absence of any declaration of law to annul or set aside the pre-existing reassessment under section 147 and assessment order dated March 28, 2022, after issuing notice under section 148, the assessing authority had no jurisdiction to reissue the notice dated July 30, 2022 under section 148A. The proceedings were without jurisdiction and a nullity, and therefore, quashed. (AY. 2017-18)

Arvind Kumar Shivhare v. UOI (2024) 464 ITR 396/ 161 taxmann.com 769 (All)(HC)

2070 **S. 148A: Reassessment-Conducting inquiry, providing opportunity before issue of notice-Change of opinion-New procedure does not depart from principle that reassessment not permissible on mere change of opinion-Notice and order disposing the objection is quashed. [S. 147, 148, 148A(b), 148A(d), Art. 226]**

The Assessing Officer passed an order dated March 31, 2022, to the effect that the reassessment was completed under section 147 read with sections 144 and 144B accepting the income declared by the assessee in the return of income, that credit was given for prepaid taxes and that the demand notice and copy of order were being issued. Thereafter, pursuant to the amendment by the Finance Act, 2021 and the Supreme Court decision in *UOI v. Ashish Agarwal (2022) 444 ITR 1(SC)* the Assessing Officer, under the amended provisions, issued an initial notice dated June 2, 2022 under section 148A(b), passed an order dated July 29, 2022 under section 148A(d) to issue the notice under section 148 which also referred to the earlier notice under the old provisions. On a writ allowing the petition, that the notice issued under section 148 to reopen the assessment under section 147 following the new procedure was on a change of opinion. The order under section 147 read with sections 144 and 144B and the notice issued under section 142(1) showed that the same set of allegations were made against the assessee, which were the subject matter of the assessment order dated March 31, 2022. The assessment proceedings already stood concluded on March 31, 2022, with regard to various aspects which emanated from the assessee's return, including the aspects which were the subject matter of notice dated June 2, 2022, issued under section 148A(b) and

order under section 148A(d). The Assessing Officer could not, under the new regime, reopen the assessment proceedings by traversing the same path and enquire into the same issues which were subject matter of the earlier assessment proceeding. Therefore, the notice, dated June 2, 2022 issued under section 148A(b), the order passed under section 148A(d) and the consequent notice, dated July 29, 2022, issued under section 148 were set aside. (AY. 2014-15)
Basic Clothing Pvt. Ltd. v. ITO (2024) 464 ITR 771 (Delhi)(HC)

S. 148A: Reassessment-Conducting inquiry, providing opportunity before issue of notice-Assessee must be given opportunity to be heard-Notice and order disposing the objection is quashed and set aside. [S. 148, 148A(b), 148A(d), Art. 226] 2071
Allowing the petition the Court held, that the respondents after issuance of the notice under section 148A(b) of the Act, had started gathering information and supporting documents ; however, even after obtaining the information and supporting documents, they did not disclose such information and supporting documents to the assessee. Consequently, the order dated March 22, 2023 passed under section 148A(d) of the Act, 1961 for the assessment year 2019-20 and also the subsequent notice dated March 22, 2023 issued under section 148 of the Act, had to be quashed and set aside. (AY. 2019-20)
Chotanagpur Diocesan Trust Association v. UOI (2024) 464 ITR 748 (Jharkhand)(HC)

S. 148A: Reassessment-Conducting inquiry, providing opportunity before issue of notice-Foreign companies-company is a resident of Singapore-Investment in Indian subsidiary-Tax on dividends, royalty and technical services-Capital account transaction-Investments could not be treated as income as same was in nature of capital account transaction not giving rise to any income[S. 9(1)((i), 115A, 148A(b), 148A(d), Art. 226] 2072
Assessee-company, a resident of Singapore, made investment in equity shares of its Indian subsidiary. Assessing Officer issued notice under section 148A(b) on ground that source of funds with regard to said investment was not explained. Assessee placed before Assessing Officer, documents, with regard to investment. However, Assessing Officer was not convinced and proceeded to pass order under section 148A(d). On writ, allowing the petition the Court held that investment in shares in Indian subsidiary could not be treated as 'income' as same was in nature of 'capital account transaction' not giving rise to any income-Held, yes-Whether therefore, impugned notice issued under section 148A(b) and order passed under section 148A(d) is quashed. (AY. 2019-20)
Telenor South Asia Investment Pte. Ltd. v. Dy. CIT (2024)299 Taxman 232 (Delhi)(HC)

S. 148A: Reassessment-Conducting inquiry, providing opportunity before issue of notice-Amount received from sale/resale of shrink-wrapped software-Not royalty or Fees for technical services-Reassessment notice and order disposing the objection is quashed-DTAA-India-Japan. [S. 9(1)(vi), 9(1)(vii), 148A(b), 148A(d), Art. 5 Art. 226] 2073
On basis of information that various payments were made to assessee in respect of which tax had been deducted at source by various entities, notice under section 148A(b) was issued holding that as assessee had not filed return, said income remained unexplained and appeared to have escaped assessment. Assessee submitted that it was

an overseas entity engaged in supply of software and that monies received from sale/ resale of shrink-wrapped software would not amount to royalty so as to be taxable and even if income so generated were to be viewed as business income, same would not be taxable in absence of a Permanent Establishment (PE) of assessee existing in India and, hence, question of unexplained income did not arise. Assessing Officer passed order under section 148A(d) observing that though assessee had claimed that income was exempt but since assessee had not filed ITR and end user licence agreement between parties, income could not be claimed as exempt. On writ, the Court held that lower authorities had clearly failed to deal with objections which struck at very root of assumption of jurisdiction as findings on aspect of royalty and PE could not have been deferred or made subject matter of further verification Since this aspect of criticality had clearly been ignored by revenue while passing impugned order, writ petition is allowed and order passed under section 148A(d) and notice under section 148 were quashed. (AY. 2020-21)

Componentsource Company Ltd. v. ACIT(IT) (2024) 299 Taxman 329/ (2025) 475 ITR 138 (Delhi)(HC)

2074 **S. 148A: Reassessment-Conducting inquiry, providing opportunity before issue of notice-Cash credits-Information which was relied upon by revenue was not completely furnished-Notice and order disposing the objection is quashed and set aside. [S. 148, 148A(b), 148A(d), Art. 226]**

An information was received by revenue about unaccounted cash entries made in bank accounts of assessee by entities Himani International (HI) Bhavani Trading Company (BTC),V. N. Trading Co (VNTC) and Oliva Trade links India Pvt Ltd (OTIPL). On the basis of information received with respect to deposits made by OTIPL through Agarwal Bullion (AB) reopening notice under section 148A(b) was issued to assessee. Information which was relied upon by revenue was not completely furnished to assessee. On writ, the Court held that the assessee was not confronted with information that he had received cash deposits from AB, therefore, assessee was not granted opportunity to rebut same. Since assessee had earlier faced scrutiny assessment for same assessment year, wherein he claimed to have disclosed all bank accounts with respect to which reassessment had been drawn, appropriate consideration be first made to material aspects noted above before fruitful reassessment proceeding might arise to assessee. Order passed under section 148A(d) and notice issued under section 148 is set aside. (AY. 2017-18)

Mahesh Kumar Verma v. UOI (2024) 299 Taxman 141 (All.)(HC)

2075 **S. 148A: Reassessment-Conducting inquiry, providing opportunity before issue of notice-Cash credits-Bank account was opened without his knowledge-Disputed questions of fact-Writ petition is dismissed. [S. 148, 148A(b), 148A(d), Art. 226]**

The Assessing Officer passed the reassessment order. The assessee filed writ petition and contended that a bank account was opened in his name without his knowledge and that transactions in such account resulted in re-assessment order. Since fact that a bank account was opened in name of assessee without his knowledge and that transactions in such account resulted in reassessment order were disputed questions of fact which

could not be conveniently addressed in proceedings under article 226. Writ petition is dismissed. (SJ)
Rakesh Beniyal v. ITO (Assessment) (2024) 299 Taxman 409 (Mad.)(HC)

S. 148A: Reassessment-Conducting inquiry, providing opportunity before issue of notice-Cash credits –Cash deposited in bank account-Reply was not considered-Reassessment notice and order disposing the objection is set aside. [S. 148, 148A(b), 148A(d), Art. 226] 2076
An assessment order was passed making addition on account of cash deposited in its bank account. Assessee has given proper reply and also attached the relevant documents. Assessing Officer passed the order without considering the reply. Reassessment notice and order disposing the objection is quashed and set aside. Matter was remanded for reconsideration. (AY. 2018-19)(SJ)
Coonoor Sri Thanthi Mariamman Kerala Seva Sangam v. AUI (2024) 299 Taxman 470/468 ITR 155 (Mad.)(HC)

S. 148A: Reassessment-Conducting inquiry, providing opportunity before issue of notice-Unexplained money-information flagged under Risk Management Strategy (RMS)-Providing accommodation entries-Existence of information-Reopening of assessment is justified. [S. 69A, 148, 148A(b), 148A(d), Art. 226] 2077
Section 148A of the Income-tax Act, 1961, was enacted by the Finance Act, 2021 ([2021] 432 ITR (St.) 52), with effect form April 1, 2021. A reopening notice under section 148A(b) was issued for reason that as per information flagged under Risk Management Strategy (RMS) formulated by CBDT, revenue had noticed that assessee had supplied goods/services of certain amount to a company which was not doing any actual business activities and was providing accommodation entries. This company was involved in receiving and giving bogus contracts/sub-contracts and raising invoices without delivery of any actual goods/services and was merely working as entry/exit provider. On writ dismissing the petition the Court held that decision of assessing authority to initiate reassessment proceedings in case of assessee had arisen on basis of 'information' received that 'purchaser' did not exist. That information was contained in reports of Income Tax Officer with respect to four addresses of purchaser. No direct evidence was disclosed by assessee (in his reply) to doubt existence of that 'information'. 'Suggestion' as to escapement of income qua sales made to (non-existing) purchaser inhered in said information. The said 'information' was relevant to 'suggestion' as to 'escapement of income' at hands of assessee. The decision of the assessing authority to initiate reassessment proceedings in the case of the assessee for the assessment year 2020-21 arose on the "information" received that the "purchaser" did not exist. That was contained in the report of the ITO with respect to the four addresses of the "purchaser". No direct evidence was furnished by the assessee, (in his reply), to doubt the existence of that "information". Hence the order under section 148A was valid. (AY. 2020-21)
Rahul Sachan v. ITO (2024) 299 Taxman 369 / 466 ITR 353 / 340 CTR 623 (All.)(HC)

2078 **S. 148A: Reassessment-Conducting inquiry, providing opportunity before issue of notice-Seeking reappreciation of entire matter on its merits, which was impermissible in review jurisdiction-Review petition is dismissed [S. 144, 147, 148, 148A(b), 148A(d), Art. 226]**

Assessee, received a notice under section 148 on 09.03.2021 for reopening assessment for relevant assessment years. Assessee responded by filing a return and requested reasons for reopening. Revenue admitted that a technical glitch caused assessee's return and request for reopening reasons to go unnoticed by Assessment Officer, leading to issuance of assessment orders under Section 144 r/w Section 147 for relevant assessment years on 03.03.2022. Assessee filed writ petitions to quash assessment orders and to stay demand. High Court set aside assessment orders dated 03.03.2022 but remanded matters back to jurisdictional Assessing Officer for passing fresh assessment orders. Assessee filed a review petition, contending that remand was contrary to law laid down in *UOI v. Ashish Agarwal [2022] 138 taxmann.com 64/286 Taxman 183/444 ITR 1 (SC) and GKN Driveshafts (India) Ltd. v. ITO [2002] 125 Taxman 963/[2003] 259 ITR 19 (SC)*. It was noted that where notice under section 148 of unamended Act was sent to assessee prior to 1-04-2021, and return filed and application seeking reasons for reopening was requested after 1-04-2021, law laid down in Ashish Agarwal (supra) would not apply and come to laid of assessee in seeking review of order. Further in GKN Driveshafts (India) Ltd. case (supra) Supreme Court noted that procedural lapse due to a system glitch did not invalidate entire proceeding. Therefore, there was no ground made out for review of common order and submissions made were more in nature of seeking reappreciation of entire matter on its merits, which was impermissible in review jurisdiction. (AY. 2013-14, 2014-15, 2015-16, 2018-19)

Rahul Suri v. UOI (2024) 299 Taxman 526 (Bom.)(HC)

2079 **S. 148A: Reassessment-Conducting inquiry, providing opportunity before issue of notice-Search-Unaccounted cash-Jurisdictional error-Question of jurisdictional error regard to invoking sections 147, 148 and 148A and not section 153C was raised, same should be considered by Assessing Officer and a finding be recorded thereon while passing final orders. [S. 148, 148A(b), 148A(d), 153C, Art. 226]**

Assessee challenged notices on ground that instead of issuing notice under section 153C, notice had been issued under section 147 wrongly. Allowing the petition the Court held that since question of jurisdictional error with regard to invoking sections 147, 148 and 148A and not section 153C was raised, same should be considered by Assessing Officer and a finding be recorded thereon while passing final orders. (AY. 2017-18, 2019-20)

Neelam Dubey (Smt.) v. UOI (2024) 299 Taxman 379 / (2025) 475 ITR 500 (All.)(HC)

2080 **S. 148A: Reassessment-Conducting inquiry, providing opportunity before issue of notice-Unrecorded marriage expenses-Inquiry not mandatory before issue of order-Writ petition to quash notice is dismissed. [S. 147, 148, 148A(b), Art. 226]**

Dismissing the petition, Court held that it was not in dispute that on April 27/28, 2019 marriage of the assessee's daughter was solemnized in a resort. The assessee had incurred the entire expenditure of the marriage. According to the assessee, he disclosed his entire income for the year 2018-19 and all sources of income to tax and filed his

return within the prescribed period. However, the Department contended that as per investigation, the assessee was evading the Income-tax under the "High Risk Transaction Case Related Information Upload/Verification Report Upload" category during search and seizure undertaken under section 132 of the Act, 1961 at the N group. Therefore, on March 28, 2023, the assessee was served with the notice under section 148A of the Act claiming escapement of income chargeable to tax for the assessment year 2019-20. Along with the notice the assessee was also supplied with information forming the basis of the notice under section 148A(b). The respondent passed the order holding that, prima facie, income chargeable had escaped within the meaning of section 147 of the Act and proposed to reassess such income. The order was valid. (AY. 2019-20
Popatlal Umedmalji Jain v. ITO (2024)463 ITR 734 (Bom)(HC)

S. 148A : Reassessment – Conducting inquiry, providing opportunity before issue of notice – Initial notice – Personal hearing – Not a statutory mandate but discretion of Assessing Officer – Writ petition dismissed – Assessee can raise contentions in reassessment proceedings – Interpretation of taxing statutes – Legislative intent – Plain language of provision must be given its ordinary meaning. [S. 132, 147, 148, 148A(b), 148A(d), Art. 226] 2081

The assessee challenged the reassessment proceedings contending that a personal hearing was mandatory under section 148A. Dismissing the writ, the Court held that section 148A requires the Assessing Officer to conduct an enquiry if required before issuing notice under section 148 and to provide an opportunity of being heard under clause (b), but the statute does not mandate a personal hearing. The words "if required" in clause (a) confer discretion on the Assessing Officer, and the legislative intent as clarified in the Finance Bill, 2021 shows that personal hearing was deliberately excluded. An assessee is granted sufficient opportunity by way of notice and reply, which the Assessing Officer must consider before passing an order under clause (d). Therefore, refusal of personal hearing does not vitiate proceedings. The principle of plain interpretation requires giving effect to the words used, and courts cannot read into the statute what the legislature has consciously excluded. All contentions of the assessee remain open to be raised in the reassessment proceedings.
Satguru Sai Extrusions Pvt. Ltd. v. UOI (2024) 463 ITR 714 / 339 CTR 55 (Bom)(HC)
Sai Balaji Extraction and Alloys Pvt. Ltd. v. UOI (2024) 463 ITR 714 / 339 CTR 55 (Bom) (HC)

S. 148A: Reassessment-Conducting inquiry, providing opportunity before issue of notice-Investments by Foreign Companies in Shares of their own Indian subsidiaries-Transactions are capital account transactions-No proof of transactions being consequence of round-tripping-Investment in shares capital account transaction not income-Notices and orders set aside. [S. 9(1)(i), 115A, 147, 148, 148A(b), 148A(d), Art. 226] 2082

Assessee, a foreign company, subscribed shares by making forward inward remittance in its wholly owned Indian subsidiary. Assessee did not file a return in the relevant year on grounds that it had not earned any income in India. Assessing Officer held that investment in shares of another entity were income which were chargeable to tax

and had escaped assessment hence issued notices under section 148A(b) in terms of Explanation 1 to section 148 and thereafter passed order under section 148A(d). On writ, the Court held that investment in shares in an Indian subsidiary could not be treated as income as same was in nature of capital account transaction and would not give rise to any income. Therefore, orders passed under section 148A (d) and notices issued under section 148 were to be set aside. Court also clarified that if any material became subsequently available with the Revenue, it shall be open to it to take proceedings in accordance with law. (AY. 2019-20)
Angelantoni Test Technologies SRL v. ACIT [2024] 158 taxmann.com 10 / 463 ITR 139 /337 CTR 973 (Delhi)(HC)

2083 **S. 148A: Reassessment-Conducting inquiry, providing opportunity before issue of notice-Violation of principle of natural justice-Order set aside-Matter remitted to National Faceless Assessment Centre. [S. 144, 144B, 147, 148A(b), 148A(d), Art. 226]**
Held, allowing the petition the Court held that the assessee was not given the requested effective opportunity of hearing and therefore the order passed under section 147 read with sections 144 and 144B of the Income-tax Act, 1961, was in violation of the principles of natural justice and therefore, set aside. In response to the notice under section 148, the assessee had filed return of income for the assessment year 2016-17. In response to the initial notice under section 148A(b) the assessee had requested for personal hearing through video conferencing. Though the link was provided, the assessee could not join the link for technical failure on the part of the Department. Despite the e-mail addressed to the Department regarding this, no further opportunity was given to the assessee and the assessment order in question had been passed. The matter was remitted to the National Faceless Assessment Centre to provide fresh link to the assessee and after hearing the assessee, the assessment order should be passed in accordance with law. Matter remanded. (AY. 2016-17(SJ)
Leric Reeches v. ITO (2024)463 ITR 750 (Ker)(HC)

2084 **S. 148A: Reassessment-Conducting inquiry, providing opportunity before issue of notice-Amalgamation-Show-cause notice against non-existent entity non-est-Show-cause notice and subsequent order for issue of notice is set aside. [S. 147, 148, 148A(b) 148A(d), Art. 226]**
Held, allowing the petition, that the show-cause notices issued under section 148A(b) to the amalgamating entities SIPL and SRPL were non est in law. The solitary ground for reassessment under section 147 was based on the premise that the assessee had not filed its return of income for the assessment year 2016-17. The assessee had duly intimated the Department about the amalgamation and that the corporate entities SIPL and SRPL did not exist. It had also stated that it had never entered into any sale transaction with SH and the sale transaction undertaken by the amalgamating entity, which was the solitary rationale for issuance of the show-cause notice under section 148A(b) had also been rightly shown in its return of income. No return of income could have been filed on behalf of the amalgamated entity as such entity was non est in law. The assessee in its return had also declared the income earned by the amalgamating entity SRPL. The Assessing Officer neither before issuing the show-cause notice under section 148A(b)

nor before passing the order under section 148A(d) had considered the assessee's return of income filed which had duly captured the income earned by the amalgamated entity. Therefore, the initial notice was issued without due application of mind and in a mechanical manner, without adhering to the statutory responsibilities envisaged under section 148. The matter need not be remitted to the Assessing Officer since the reason for the issuance of the notice under section 148A(b) was itself de hors the available record. The show-cause notice under section 148A(b) and the order passed under section 148A(d) were set aside. The Department was given liberty to take appropriate fresh action, if permissible in law on any other count. (AY. 2016-17)
Suridhi Commercial Infra Pvt. Ltd. v. ITO (2024)463 ITR 169 (Delhi)(HC)

S. 148A: Reassessment-Conducting inquiry, providing opportunity before issue of notice-Profit attribution-Revision order is set aside by the Tribunal-Change of opinion-Notice and order disposing the objection is quashed-DTAA-India-Malaysia. [S. 143(3), 148, 148A(b), 148A(d), 263,art. 5, Art. 226] 2085

Assessee, Malaysian resident company, entered into a marketing service agreement and a technical service agreement with Indian entity. Since Indian entity constituted a dependent agent permanent establishment (DAPE) of assessee in India, assessee determined profits that were attributable to its DAPE in India and, accordingly, offers same to tax in India. Assessing Officer passed an assessment order accepting income returned by assessee. Thereafter, assessee was issued a show cause notice under sections 148 and 148A(b) accompanied by reasons to believe escapement of income. On writ, the Court held that reasons for reopening indicated in notice was an order passed under section 263 for assessment year 2017–18 which was set aside by Tribunal. Further, pursuant to order passed by Tribunal, Assessing Officer also passed order giving effect to Tribunal order under section 143(3) read with section 254 thereby nullifying demand raised. Since show cause notices and notice issued under section 148 was based on contents and findings of Commissioner in his revision order, which order was already set aside by Tribunal, notice being a 'change of opinion' by Assessing Officer were liable to be quashed. (AY. 2016-17)
MFE Formwork Technology SDN. BHD v. Dy. CIT (2024) 298 Taxman 790 /464 ITR 645 (Bom)(HC)

S. 148A: Reassessment-Conducting inquiry, providing opportunity before issue of notice-Capital gains-Change of opinion-Reassessment notice and order disposing the objection is quashed. [S. 148, 148A(b), 148A(d), Art. 226] 2086

Assessee sold a flat during assessment year. Assessing Officer selected case of assessee for limited scrutiny assessment with regard to investment in flat, capital gain/income on sale of flat and issued various notices under section 142(1) to her. Assessee responded to notices and provided details of flat sold. Assessing Officer passed assessment order stating that in view of material on record, no addition on issues was made. Subsequently Assessing Officer issued on assessee notice under section 148A(b) and passed order under section 148A(d) and issued notice under section 148 holding that flat sold was short-term capital asset and gain arising on transfer of such asset was short-term capital gain. On writ, the Court held that reopening of assessment is purely

on basis of change of opinion of Assessing Officer from that held earlier during course of assessment proceedings and thus not valid. Followed *Siemens Financial Services (P.) Ltd. v. Dy. CIT [2023] 154 taxmann.com 159/457 ITR 647 (Bom)(HC)* (AY. 2018-19)
Mira Bhavin Mehta v. ITO (2024) 298 Taxman 460 / 464 ITR 778 (Bom.)(HC)

2087 **S. 148A: Reassessment-Conducting inquiry, providing opportunity before issue of notice-Capital gains-Full value of consideration-Stamp valuation-Directed to file proper reply. [S. 148, 148A(b), 148A(d), Art. 226]**
Revenue issued notice under section 148A(b) for alleged not declaring full value of consideration as per the stamp valuation. The Assessee filed the writ petition. and contended that during assessment year 2016-17, he paid only a sum of Rs. 1,00,000/-, pursuant to Judgment and decree dated 16-10-2014 and therefore, question of invoking section 50C did not arise at all. He relied on first proviso to section 50C. Court held that although, submission was made by assessee on merits on strength of proviso to section 50C, fact remained that assessee had not filed regular return under section 139 for assessment year 2016-17. Even, if assessee might have a case for dropping of proposed proceedings, it would be better for him to file a proper reply to notice issued under section 148 as there was no previous history of any proceeding under Income-tax Act. Accordingly, writ petition is dismissed and the Assessing Officer was directed to take into consideration all relevant facts before proceeding to conclude whether any income had escaped assessment for assessment year 2016-17. (AY. 2016-17)(SJ)
Venkataramachettiar Manoharan v. ITO (2024) 298 Taxman 19 / 465 ITR 755 (Mad.)(HC)

2088 **S. 148A: Reassessment-Conducting inquiry, providing opportunity before issue of notice-Corpus donation-Revenue audit objection-Reopening is justified-Writ petition is dismissed. [S. 11, 143(3), 148, 148A(b), 148A(d), Art. 226]**
Assessment of assessee-trust was completed under section 143(3) at 'Nil' income. Revenue audit party however objected to finalization of return of assessee-trust at 'Nil' for reason that during year assessee received corpus donations which were not included in income for application under section 11. On basis of revenue audit objection, Assessing Officer issued notice under section 148 by issuing notice. On writ dismissing the petition the Court held that with effect from 1-4-2022, audit objection is one of reasons for reopening assessment as per clause (ii) of Explanation 1 to section 148. Therefore, where revenue audit raised an objection that assessment was not completed in accordance with provisions of Act, it could not be treated as a change of opinion because this was statutory prescription and statutory ground/reason for reopening assessment as Assessing Authority had proceeded strictly in accordance with provisions of clause (ii) of Explanation 1 to section 148. (AY. 2016-17)(SJ)
Sree Narayana Guru Memorial Educational and Cultural Trust v. ACIT (2024) 298 Taxman 483 (Ker.)(HC)

S. 148A: Reassessment-Conducting inquiry, providing opportunity before issue of notice-Cash credits – Accommodation entries –Order is quashed and set aside-Directed to pass a speaking order. [S. 68, 143(1), 148A(b), 148A(d), Art. 226] 2089

Assessing Officer issued a notice under section 148A(b) alleging that information suggested that income chargeable to tax for relevant year had escaped assessment in hands of assessee. Notice contained brief details of information collected/received by Assessing Officer that assessee was a beneficiary of accommodation entries amounting to Rs. 27.50 lakhs from one Kusum Multitrade Pvt Ltd and assessee was called upon to show cause as to why income arising out of above transactions should not be treated as income which had escaped assessment in hands of assessee and, consequentially, why a notice under section 148 should not be issued. Reply by assessee was rejected by Assessing Officer by an order passed under section 148A(d) on ground that assessee failed to submit E-way bills, weigh bridge slips, delivery challans, lorry receipts, toll booth slips, etc.. On writ, allowing the petition, the Court held that since assessee had submitted copy of financial statement, ledger details, ledger account details of GST sales in respect of tax invoices of all parties and copy of bank statement of HDFC Bank through which 'KMPL' had made payment, order passed under section 148A(d) is quashed and set aside and matter was to be remanded for de novo consideration. (AY. 2019-20)

Vijay Steel Traders v. ACIT (2024) 298 Taxman 758 (Bom.)(HC)

S. 148A: Reassessment-Conducting inquiry, providing opportunity before issue of notice-Housewife-Property purchased by husband-Joint holder-Reassessment notice and order disposing the objection is quashed. [S. 69B, 148, 148(A)(b), 148A(d), Art. 226] 2090

Assessee is a housewife who had no income and therefore, was not filing any income tax return. She received a notice under section 148A(b) from Assessing Officer stating that he had information which suggested that income chargeable to tax had escaped assessment and thus requiring assessee to show cause as to why proceedings under section 148 should not be initiated. Assessee submitted that property was purchased by her husband and all payments were made by him. Assessee also explained that her name was included as a joint holder in agreement for sale, but no payment was made by her. She also submitted copy of registered agreement for property and husband's bank details. The Assessing Officer passed order under section 148A(d) by holding that explanation and documents submitted by assessee did not conclusively preclude suggestion based on information available that income chargeable to tax had escaped assessment. On writ allowing the petition the Court held that since Assessing Officer had accepted that assessee had not made any payment for purchase of property, it was not a fit case for reopening assessment in case of assessee. Notice and order disposing the objection is quashed. (AY. 2016-17)

Kalpita Arun Lanjekar v. ITO (2024) 298 Taxman 626 (Bom.)(HC)

2091 **S. 148A: Reassessment-Conducting inquiry, providing opportunity before issue of notice-Penny stock-Fictitious loss-Cash credits-Notice and order is quashed. [S. 148, 148A(b), 148A(d), Art. 226]**

Assessee-company had filed return declaring loss. Assessing Officer completed assessment under section 143(3). The Assessing Officer issued on assessee a notice under section 148A(b) alleging that information uploaded on INSITE portal had surfaced that assessee had carried out transactions in penny script and booked fictitious losses Assessing Officer passed an order under section 148A(d) On writ, the Court held that the assessee in reply to notice had given evidence that information uploaded on INSITE portal was incorrect and infact assessee had made a profit. Since Assessing Officer had not reflected on information submitted by assessee and passed orders suitably, order under section 148A(d) and notice under section 148 were to be quashed and set aside. (AY. 2019-20)

Banas Finance Ltd. v. ACIT (2024) 298 Taxman 395 (Bom.)(HC)

2092 **S. 148A: Reassessment-Conducting inquiry, providing opportunity before issue of notice-Unexplained investments-On money payment for purchase of a flat –Search on builder-No material-Notice and order disposing the objection is quashed and set aside. [S. 148, 148A(b), 148A(d), Art. 226]**

Assessing Officer issued a notice under section 148A(b) on ground that during search operation carried out in case of builder, there was some material found regarding unaccounted income which included on-money receipts on sale of flat by a land development company, Lucina, to different customers which included assessee. Assessee replied that payment for flat was made out of redemption of fixed deposits and loans from daughter and son-in-law and denied payment of any amount in cash to builder in addition to basic price of flat. Assessing Officer passed an order holding that source of income for purchase of immovable property remained unexplained and therefore, it would fall within meaning of assets as per Explanation 1 of section 149. On writ, allowing the petition, the Court held that only basis on which an allegation was made that assessee had paid cash was a statement of somebody from Lucina, moreover, there was nothing on record to indicate that assessee had paid said amount. Further this amount of Rs. 20. 91 lakhs had been offered by Lucina to tax before Settlement Commission. Since there was no tangible material to issue notice under section 148A or section 148, notice and assessment order is quashed and set aside (AY. 2015-16)

Sumathi Janardhana Kurup v. ITO (2024) 298 Taxman 502 / 471 ITR 604 (Bom.)(HC)

2093 **S. 148A: Reassessment-Conducting inquiry, providing opportunity before issue of notice-More than three years from end of relevant assessment year after obtaining approval from Chief Commissioner-Chief Commissioner was not a specified authority under clause (ii) of section 151-Reassessment notice and order disposing the objection is quashed. [S. 148, 148A(b), 148A(d), 151(ii), 195, Art. 226]**

Assessee had entered into transactions with Fives France under Assistance Service Agreement (ASA) and filed AAR application seeking ruling on whether payments received by Fives France would be subject to withholding tax under section 195, which was declined. Meanwhile, assessee had filed its return of income which was accepted

by Assessing Officer. Subsequently, a notice under section 148 was issued on basis of payment to Fives Solios SA and about three transactions with Fives France on ground that assessee had failed to deduct withholding tax. It was noted that on receipt of reasons for reopening, assessee submitted that application before AAR was only in respect of services provided under ASA between assessee and Fives France, which was operated until 31-12-2024 and transactions between assessee and Fives Solios SA and three transactions with Fives France were not covered within scope of AAR application. On writ the Court held that since reasons for reopening were based on grossly erroneous factual foundation and assessee having actually withheld and remitted taxes in respect of transactions with Fives France that formed subject of application before AAR, impugned order under section 148A(d) and notice under section 148 were liable to be quashed. As regards issue of notice under sectiion 148, which was issued after lapse of more than three years from end of relevant assessment year after obtaining approval from Chief Commissioner, since Chief Commissioner was not a specified authority under clause (ii) of section 151, reassessment proceedings were liable to be quashed. (AY. 2014-15 to 2016-17)

FIVES India Engineering & Projects (P.) Ltd. v. ITO (2024) 298 Taxman 762 / 464 ITR 760/338 CTR 953 (Mad.)(HC)

S. 148A: Reassessment-Conducting inquiry, providing opportunity before issue of notice-Typographical error-Sanction for issue of notice –Principal commissioner-Non application of mind-[S. 148 148A(b), 148A(d), 151, Art. 226] 2094

Order passed under section 148A(d) and a consequent notice under section 148, both approved by Principal Commissioner under section 151, were issued against assessee. On writ, the Assessee contended that sanction/approval under section 151 had been obtained and granted without application of mind as quantum of income which had escaped assessment as mentioned in approval and in draft order varied from each other. In reply, department mentioned it as a typographical error. Allowing the petition the Court held that explanation could not be accepted because a typographical error could have been committed by AO, who was seeking approval, but if only Additional/Joint Commissioner or Principal Commissioner had read approval application and draft of order to be issued under section 148A(d), they would have certainly noticed discrepancy and they should have either refused approval or sent application back to AO for filing correct form for approval. In such circumstances, order under Clause (d) of Section 148A as well as consequent notice issued under section 148 was to be quashed and set aside. (AY. 2019-20)

Teleperformance Global Service (P.) Ltd. v. ACIT (2024) 298 Taxman 769 (Bom.)(HC)

S. 148A: Reassessment-Conducting inquiry, providing opportunity before issue of notice-Income below taxable income-In active email-Principle of natural justice-Notice and order is quashed-The matter is remitted back to the Assessing Officer for reconsideration afresh in accordance with law. [S. 143(3), 148, 148A(b), 148A(d), Art. 226] 2095

Assessee, did not file return as his income was below exemption limit. Revenue issued a notice under section 148A(b) to reassess their income. Assessee on account of an inactive e-mail id, couldn't respond to said notice which led to passing of an ex parte

assessment order and demand. On writ the Court held that since assessee was under a bona fide impression that his income was below exemption limit and was mistakenly advised that there was no requirement to file return and his failure to respond to notice under section 148A(b) was due to unavoidable circumstances, it could be said that impugned notice, order etc., were violative of principle of natural justice and deserved to be quashed. The matter is remitted back to the Assessing Officer for reconsideration afresh in accordance with law. (AY. 2018-19)
Bellamane Narayan Shridhar v. NFAC (2024) 298 Taxman 74 / (2025) 473 ITR 663 (Karn) (HC)

2096 **S. 148A: Reassessment-Conducting inquiry, providing opportunity before issue of notice-Service of notice –Not issued on the registered email of the company-The notice and consequential order passed under section 148A(d) sent to secondary e-mail address were quashed and set aside. [S. 56(2)(x), 148, 148A(b). 148A(d), 282, Art. 226]**
Assessee is a company which is engaged in business of developing and managing hotels, motels, resorts, restaurants, cafes and other similar activities. Assessing Officer had issued a notice under section 148A(b) to assessee on ground that there had been a heavy financial transaction for sale/purchase of a property as per section 56(2)(x). In absence of reply from side of assessee, Assessing Officer passed an order under section 148A(d) and, consequently, a notice under section 148 was also issued. On writ the Court held that notice was not issued on registered e-mail address of assessee-company. Assessee had used or made available e-mail ID taxmohit56@gmail.com for e-filing of income-tax return even since assessment year 2020-21 and same had been used by him even for filing of latest income-tax return for assessment year 2022-23. Further, said e-mail ID had been also mentioned in income-tax return and same was relatable to PAN data base and also mentioned in master data of assessee's company. Accordingly, the notice under section 148A(b) and consequential order passed under section 148A(d) sent to secondary e-mail address were quashed and set aside. (AY. 2019-20)
GRS Hotel (P.) Ltd. v. UOI (2024) 298 Taxman 199 /340 CTR 194 / 240 DTR 387 / 471 ITR 68 (All.)(HC)

2097 **S. 148A: Reassessment-Conducting inquiry, providing opportunity before issue of notice-Cash credit-Non-speaking order-Survey by OSBCPL indicated that assessee advanced cash loan and received interest-letter of issuance of a DIN No. to the notice issued-Held, Mandatory to follow procedure u/s 148, [S. 68, 133A, 148, 148A(b), 148A (d)) Art. 226]**
After a survey by OSBCPL, documents were seized from the assessee indicating that the assessee had advanced cash loans and received interest. Notice u/s 148 was issued stating that income had escaped assessment. After the rejection of objections, a letter for issuance of a DIN No. to the notice u/s 148 was issued. On writ, the Hon'ble High Court held that the provisions of Section 148A of the Act and the guidelines issued by the CBDT provide for passing a speaking order after considering the reply and the material on record. The impugned order was not in consonance with the procedure prescribed and the issue goes to the root of the jurisdiction for initiating the proceedings under section 148 of the Act. The case falls within the exception of the self-imposed

restriction of not entertaining the writ where the alternative remedy is available. The Court quashed the order and remanded the matter back to Revenue. Hence, a writ petition is allowed. (AY. 2015-16)
R. K. Buildcreations (P.) Ltd. v. ITO [2024] 298 Taxman 166 / 462 ITR 478 /338 CTR 608 (Raj)(HC)

S. 148A: Reassessment-Conducting inquiry, providing opportunity before issue of notice-Notice u/s 148A(b) issued without approval from specified authority-Held, order u/s 148A(d) neither a final order nor any demand arose from it –Liberty to assesee to raise any point of merit-Writ petition disposed in favor of Revenue. [S. 148, 148A(b) 148A(d), 151, Art. 226] 2098

Assessee challenged the order u/s. 148A(d) on the grounds that notice u/s. 148A (b) was issued without the approval from the "specified authority" u/s. 151 of the Act. The Court held that before issuance of notice under section 148A (b) of the Act no approval from "specified authority" is required under section 151 of the Act. It was also held that the impugned order under section 148A (d) of the Act is neither a final assessment order nor any demand arises out of it and Petitioner has ample opportunity to make a case if it has in its favour, in course of proceeding subsequent to the order under section 148A (d) of the Act for dropping the proceedings. Hence, writ petition was dismissed in favor of Revenue. (AY. 2019-20)
Suraj Singh v. ITO [2023] 156 taxmann.com 668/ (2024) 462 ITR 490(Cal)(HC)

S. 148A: Reassessment-Conducting inquiry, providing opportunity before issue of notice-Res Judicata-Notice on basis of issues decided favourably in earlier years-Notice and order disposing the objection is quashed. [S. 148, 148A(b), 148A(d), Art. 226] 2099

Allowing the petition the Court held that the regular assessment carried out in the assessment year 2018-19, and scrutiny assessment carried out in the assessment year 2020-21, also dealt with the issues which were subject matter of the assessment year for the Assessment year 2019-20. Notice and order are quashed and set side. Court held that rule of res judicata does not apply to Income-tax, i. e., each assessment year is different. However, Assessing Officer needs to apply the principle of consistency before passing the assessment order. Followed, *Radhasoami Satsang v. CIT (1992) 193 ITR 321(SC)*. (AY. 2019-20)
Hydrocarbons Education and Research Society v. ACIT (2024)462 ITR 216 (Delhi)(HC)

S. 148A: Reassessment-Conducting inquiry, providing opportunity before issue of notice-Development activities on behalf of State Government-Acting as an agent of State Government and income of assessee was restricted to Rs. 5 lakhs per annum only-Reassessment notice and order disposing the objection is quashed and set aside. [S. 148A(b), 148A(d), Art. 226] 2100

The assessee was the New Town Development Authority appointed under sub-section 3(A) of section 113 of the MRTP Act, 1966 and the work of assessee was being carried out on behalf of the State Government. The assessee was acting as an agent of the State Government and its income was restricted to Rs. 5 lakhs. The Assessing Officer accepted the returned income of the assessee to be a fixed amount of Rs. 5 lakhs only.

Subsequently, the Assessing Officer issued a reopening notice under section 148A(b) upon the assessee and further an order was passed under section 148A(d) and notice under section 148 was issued. On writ, the Court held that the Assessing Officer has accepted the returned income of the assessee to be a fixed amount of Rs. 5 lakhs only therefore the question of any income escaping assessment in the case of the assessee does not and cannot arise. Therefore, the notices and orders are quashed and set aside. (AY. 2013-14)

City and Industrial Development Corporation of Maharashtra Ltd. v. ACIT (2024) 297 Taxman 42 (Bom.)(HC)

2101 **S. 148A: Reassessment-Conducting inquiry, providing opportunity before issue of notice-Unexplained investments –Purchases reflected in GSTR-1-Failure to reconcile-Reassessment proceeding is valid. [S. 69, 148,148A(b), 148A(d), Art. 226]**

On the basis of information reflected in GSTR-1 forms, reassessment notice was issued. The asseee filed writ petition challenging the reassessment notice. Dismissing the petition the Court held that the assessee failed to provide purchase details, invoices, and bank statements, prompted Assessing Officer to conclude that certain sum had escaped taxation. Since assessee had failed to provide any plausible explanation for transaction which stood reflected in GSTR-1 forms and moreover, there was material to suggest that income had escaped assessment, Assessing Officer rightly initiated reassessment proceedings. (AY. 2109-20)

Kordient Ventures (P.) Ltd. v. Dy. CIT (2024) 297 Taxman 443 (Delhi)(HC)

2102 **S. 148A: Reassessment-Conducting inquiry, providing opportunity before issue of notice-Unexplained money –Limitation-After three years-Deposit was only Rs 33. 62 lacs-Notice is barred by limitation. [S. 148, 148A(b), 148A(d), 149(1)(a), Art. 226]**

Assessing Officer issued on assessee a notice under section 148A(b) after three years from relevant assessment year indicating that he had deposited Rs. 59. 75 lacs in cash in his bank account during said year. Assessee filed reply indicating that he had deposited Rs. 33. 62 lacs only, i. e., less than Rs. 50 lacs and as notice was issued after three years from assessment year, same was barred by limitation. Assessing Officer refused to drop proceedings and passed assessment order. On writ, allowing the petition, the Court held that since cash deposit was Rs. 33.62 lacs only and once said aspect was clear to Assessing Officer, he lost his jurisdiction to further continue with proceedings as limitation under section 149(1)(a) of three years would trigger and he would loose jurisdiction on account of limitation, as amount was less than Rs. 50 lacs. Court held that since notice issued under section 148(A)(b) was barred by limitation, notice and all other orders are quashed. (AY. 2015-16)

Bijendra Singh v. ITO (2024) 297 Taxman 455 (Raj.)(HC)

S. 148A: Reassessment-Conducting inquiry, providing opportunity before issue of notice-Unexplained money-Beneficiary of accommodation entries-Denial of allegation-Identical issue raised in the original notice issued under section. 148-Deletion of addition. in appeal-Identical notice once again under section. 148A(b)-Notice and order disposing the objection is quashed. [S. 148, 148A(b), 148A(d), Art. 226] 2103

Assessing Officer issued on assessee a notice under section 148 seeking to reopen assessment on ground that he was a beneficiary of accommodation entries provided by a party and a certain amount stood credited in bank accounts of assessee maintained with HDFC Bank and DCB Bank through entry provider. Assessee denied allegations levelled against him. Assessing Officer thereafter passed reassessment order. Assessee against said order filed appeal. The Assessing Officer thereafter issued on assessee a notice under section 148A(b) and allegations levelled against him were identical to what were contained in notice issued under section 148 Assessing Officer then passed an order under section 148A(d) of the Act. On writ, the court held that since allegations levelled against assessee in both notices were identical and Assessing Officer without any actionable material embarked on a journey to reopen a closed assessment and Commissioner (Appeals) decided appeal in favour of assessee, impugned order passed under section 148A(d) is quashed. (AY. 2015-16)

Arun Khanna v. ITO (2024) 297 Taxman 109 (Delhi)(HC)

S. 148A: Reassessment-Conducting inquiry, providing opportunity before issue of notice-Unexplained expenditure-Accommodation entries-Violation of principle of natural justice-Search and seizure-Opportunity of hearing was not granted-Notice and order is set aside with liberty to Assessing Officer to pass a fresh order after hearing. [S. 132, 148, 148A(b), 148A(d), Art. 226] 2104

On the basis of search and seizure action against an entity, reassessment proceeding was initiated against assessee by issuing of notice under section 148A(b) on ground that assessee had received accommodation entries regarding bogus purchases from said entity. Thereafter, an order under section 148A(d) was passed and further notice under section 148 was issued. On writ allowing the petition the Court held that since no oral hearing was granted to assessee before passing impugned order under section 148A(d), order is set aside with liberty to Assessing Officer to pass a fresh order after hearing assessee. (AY. 2019-20)

Deepak Modi v. ACIT (2024) 297 Taxman 82 (Delhi)(HC)

S. 148A: Reassessment-Conducting inquiry, providing opportunity before issue of notice-Proceedings yet to be completed-Writ petition is dismissed. [S. 148, 148A(b), 148A(d), Art. 226] 2105

The Assessing Officer had passed an order under section 148A(d) and issued a notice under section 148 seeking to reopen the assessment for relevant assessment year. The assessee filed writ petition challenging the order and notice on the ground that the impugned order under section 148A(d) and resulting reopening notice under section 148 was passed without taking into account assessee's reply. Court dismissed the petition on the ground that the notice is premature stage when the proceedings initiated against the assessee are yet to be concluded by the statutory authorities. (AY. 2016-17)

Rajesh Patidar v. ITO (2024) 297 Taxman 30 / 469 ITR 510 (MP)(HC)

2106 **S. 148A: Reassessment-Conducting inquiry, providing opportunity before issue of notice- e-filing portal did not include a tab for submission of an online reply-Matter remanded back for consideration. [S. 148, 148A(b), 148A(d), Art. 226]**
Assessee submitted reply to said notice physically contending that e-filing portal did not include a tab for submission of an online reply. Order under section 148A(d) and consequent notice under section 148 was passed on ground that assessee did not submit a reply to notice. On writ, the Court held that since reply submitted by assessee bore acknowledgement of Assessing Officer, order passed to effect that assessee did not file reply was to be quashed and matter is remanded back for consideration of objections of assessee. Matter remanded. (AY. 2013-14)
Jaganathan Bhaarath v. ACIT (2024) 297 Taxman 461 (Mad.)(HC)

2107 **S. 148A: Reassessment-Conducting inquiry, providing opportunity before issue of notice-If required-Cash deposits during demonetization-Notice issued to clarify cash deposited in a particular bank-Order passed after considering the reply of assesee-Writ is dismissed. [S. 148A(b), 148A(d), Art. 226]**
On writ the assessee contended that notice was not permissible under law as it clubbed various assessment years. Dismissing the petition the Court held that the Assessing Officer in no uncertain terms had clarified by e-mail addressed to assessee that they were required to submit details of cash deposits made in a particular bank account in name of assessee during financial year 2015-16 relevant to assessment year 2016-17. Since information called for in notice pertained to relevant assessment year, such e-mail sent by Assessing Officer could not be construed to be an amendment of notice issued under section 148A(b). Conduct of enquiry under section 148A(a) has not been made mandatory but it is discretionary and has been vested with Assessing Officer as provision uses its expression 'if required'. Since, order under section 148A(d) was passed by Assessing Officer after considering reply furnished by assessee in response to notice issued under clause (b), stipulation under clause (d) had been complied with by Assessing Officer who had taken a decision, on basis of material available on record including reply given by assessee and found that case of assessee for relevant assessment year was a fit case to issue notice under section 148 and, thus, provision of section 148A had been followed by AO. (AY. 2016-17)
Champa Impex (P.) Ltd. v. UOI (2024) 297 Taxman 336 /337 CTR 356/ 471 ITR 83 (Cal.) (HC)
Editorial : Champa Impex (P) Ltd. v. UOI (2024) 337 CTR 365 /470 ITR 689 (Cal) (HC)

2108 **S. 148A: Reassessment-Conducting inquiry, providing opportunity before issue of notice-Dropping of re-assessment proceedings after considering the reply-Issuing notice again taking contrary stand within span of five days-Notice and order is quashed-Strictures-Principal Chief Commissioner is directed to conduct an inquiry against concerned officer who had passed said two orders, which contradicted each other, in a span of five days and to take necessary action. [S. 148A(b), 148A(d), 149, 151, Art. 226]**
Assessing Officer after considering submissions of assessee passed order under section 148A(d) dropping re-assessment proceedings for relevant assessment year. The Assessing Officer once again issued reassessment notice within a span of five days. On writ,

allowing the petition, Court held that he could not have changed that opinion without any basis and thus subsequent notice issued under section 148A(b) and order passed under section 148A(d) read with section 148 taking a complete contrary stand is quashed. Court also directed Principal Chief Commissioner to conduct an inquiry against concerned officer who had passed said two orders, which contradicted each other in a span of five days and to take necessary action. (AY. 2014-15)
Siemens Ltd. v. Dy. CIT (2024) 297 Taxman 587 / 471 ITR 304 (Bom.)(HC)

S. 148A: Reassessment-Conducting inquiry, providing opportunity before issue of notice-Principle of natural justice-Order passed without granting an opportunity of hearing-Notice and order is set aside-Matter remanded back to the Assessing Officer. [Art. 226] 2109

Assessing Officer issued show-cause notice under section 148A on 17-3-2021 along with details of information on basis of which Assessing Officer believed that income chargeable to tax had escaped assessment. Notice mandated to file reply on or before 24-3-2022. Time was sought on behalf of assessee till 8-4-2022 through online portal. The Assessing Officer passed order under section 148A(d) on 30-3-2022 without granting time to assessee to file reply to notice under section 148A(b). Assessing Officer thereafter issued notice under section 148 on 31-3-2022 seeking reopening of assessment for assessment year 2018-19. On writ, notice issued under section 148 and order passed under section 148A(d) were quashed and set aside and matter is remanded back to Assessing Officer to grant an opportunity of hearing to assessee to file a reply as provided under section 148A(b) of the Act. (AY. 2018-19)
Ahmedabad District Co-Op Milk Producers Union Ltd. v. ITO (2024) 297 Taxman 315 (Guj.)(HC)

S. 148A: Reassessment-Conducting inquiry, providing opportunity before issue of notice-Time limit for notice-Less than 50 lakhs-Sale of property-Capital gains-Tax deducted at source-Notice and order disposing the objection is quashed. [S. 148, 148A(b), 148A(d), 149, Art. 226] 2110

Notices under section 148A(b) were issued against assessee for reopening of her case on ground that as per information available with department, she had sold an immovable property for certain consideration during year, but no return had been filed by her and income from capital gains on sale of immovable property stood unexplained/untaxed. Assessee filed reply to such notices contending that she and her husband had transferred property for a total consideration of certain amount and TDS was deducted by purchaser under sale deed and because her husband did not have his PAN, her PAN was furnished and TDS corresponding to total sale price was uploaded to her PAN. Assessing Officer passed an order under section 148A(d) on ground that explanation offered could not be accepted in law. On writ the Court held that as per terms of section 149, notice under section 148 could not be issued after three years have elapsed from end of relevant assessment year, unless income chargeable to tax which had escaped assessment was likely to amount to Rs. 50 lakhs or more. On the facts it was not disputed that entire consideration was received by assessee's husband and assessee could only have received 50 per cent

of sale consideration which would be less than Rs. 50 lakhs, notice under section 148A(b) could not have been issued against assessee. Accordingly, the notices issued under section 148A(b) and order passed under section 148A(d) were quashed and set aside. (AY. 2016-17)
Pramila Mahadev Tadkase v. ITO (2024) 297 Taxman 161/ 468 ITR 275 (Karn.)(HC)

2111 **S. 148A: Reassessment-Conducting inquiry, providing opportunity before issue of notice-Order based on New reasons-Adequate opportunity should be provided-Order is set aside. [S. 144B, 148, 148A(b), Art. 226]**
Allowing the petition the Court held that the notice was based only on certain reasons, whereas the order added new reasons for the order. The assessee had not been given an opportunity to answer and explain them. Therefore, the demand was erroneous and the order proceeded to give new reasons, which the assessee had not been given an opportunity to defend, the order had to be set aside. (AY. 2016-17) (SJ)
Packirisamy Senthilkumar v. Government Of India [2024] 461 ITR 473 (Mad)(HC)

2112 **S. 148A: Reassessment-Conducting inquiry, providing opportunity before issue of notice-No violation of principles of natural justice. -Writ petition is dismissed. [S. 148, 148A(b), 148A(d), Art. 226]**
Dismissing the petition the Court held that the Assessing Officer had passed a speaking order under section 148A(d) in compliance with the statutory provisions and after a detailed discussion based on the facts and evidence which could not be substituted by the court in exercise of writ jurisdiction under article 226 of the Constitution of India. The reasoning and finding of the Assessing Officer being not satisfactory to the assessee could not be a ground to interfere with the order. There is a difference between non-consideration of the objections of the assessee and consideration of the objections according to the assessee not being satisfactory. The order under section 148A(d) was also not in violation of principles of natural justice. (AY. 2017-18)
Dinesh Kumar Goyal, HUF v. ITO. (No. 1) (2024)461 ITR 111 / 161 taxmann.com 584 (Cal)(HC)
Editorial : Dinesh Kumar Goyal, HUF v. ITO. (No. 2) (2024)461 ITR 113 (Cal)(HC), decision of single judge is reversed.

2113 **S. 148A: Reassessment-Conducting inquiry, providing opportunity before issue of notice-No procedural irregularities or lack of opportunity of being heard-Order containing detailed reasoning-Alternative remedy-Writ petition is dismissed. [S. 147, 148, 148A(b), 148A(d), Art. 226]**
Dismissing the petition the Court held that the assessee could not point out any procedural irregularity or illegality in the proceeding subsequent to the order under section 148A(d) of the Act and in passing the final assessment order under section 147 of the Act nor show that the final assessment order was passed without granting any opportunity of hearing to the assessee. The reassessment order under section 147 of the Act contained detailed reasoning based on facts and evidence and the court in exercise of its constitutional writ jurisdiction under article 226 of the Constitution of India cannot act as an Assessing Officer or an appellate authority to reappreciate the evidence

and findings and substitute them with its own. In addition, statutory alternative remedy by way of appeal was available to the assessee. (AY. 2018-19)?
GSP Piling Constructions Pvt. Ltd. v. ACIT (No. 1) (2024)461 ITR 45/160 taxmann.com 365 (Cal)(HC)
Editorial : Refer, GSP Piling Constructions (P.) Ltd. v ACIT (No 2) (2023) 156 taxmann.com 665 (2024) 461 ITR 59/ 296 Taxman 524 (Cal)(HC), division bench remanded the matter to the Assessing officer, with directions.

S. 148A: Reassessment-Conducting inquiry, providing opportunity before issue of notice-Principle of natural justice-No adequate opportunity to respond to notice-Notice of reassessment is quashed-Opportunity to respond the notice. [S. 148, 148A(b), Art. 226] 2114
Held, that the orders in question were unsustainable as the assessees had not been given adequate opportunity to respond to the notices issued under section 148A(b) of the Income-tax Act, 1961. Notice and order is quashed. The respondent is directed to pass a fresh order after giving a reasonable opportunity of hearing.
Shanmugasundaram Ravichandran v. ACIT (2024)460 ITR 247 /161 taxmann.com 212(Mad)(HC)
Shanmugasundaram Rangasamy v. ACIT (2024)460 ITR 247 /161 taxmann.com 212(Mad) (HC)
New Arcot Plywoods and Glasses v. ACIT (2024)460 ITR 247 /161 taxmann.com 212(Mad) (HC)

S. 148A: Reassessment-Conducting inquiry, providing opportunity before issue of notice-Provided opportunity of hearing-Reply considered-Petition is dismissed. [S. 148, 148A(b), 148A(d), Art. 226] 2115
Dismissing the petition the Court held that the assessee is provided opportunity of hearing and reply is considered. The assessee has alternative remedy. Petition is dismissed. (AY. 2019-20)
Nitin Agarwal v. ITO (NO. 1) (2024)460 ITR 321 (Cal)(HC)
Editorial : Division bench set aside the order of single judge, Nitin Agarwal v. ITO (NO. 2) (2024) 460 ITR 323 (Cal)(HC)

S. 148A: Reassessment-Conducting inquiry, providing opportunity before issue of notice-Order passed without providing information gathered from investigation wing-Order and subsequent notice is quashed and set aside. [S. 2((15),12A, 148, 148A(b) 148A(d), Art. 226] 2116
Assessing Officer on basis of information on the insight portal of the Income-tax Department held that assessee was indulged in real estate activities. On basis of same, a notice under section 148 was issued upon assessee. On writ the Court held that order under section 148A(d) was passed without providing details uploaded on insight portal along with information gathered from investigation wing and new information uploaded on insight portal. Order and notice is quashed. The matter remitted back to the ITO to supply all the relied upon documents on the basis of which the notice under section 148A(b) has been issued and pass the order strictly in accordance with law as mandated in the provision itself and the circular (AY. 2019-20)
Chotanagpur Diocesson Trust Asson. v. UOI (2024) 296 Taxman 16 /464 ITR 748 (Jharkhand)(HC)

2117 **S. 148A: Reassessment-Conducting inquiry, providing opportunity before issue of notice-Cash credits-Bogus entry-No transaction is carried out-Order disposing objection and notice is quashed. [S. 68, 148A(b), 148A(d), Art. 226]**
Allowing the petition the court held that during financial year it was found that no transactions had been carried out by assessee with alleged accommodation entry provider. His name was inadvertently mentioned by Investigation Wing in report due to similarity in names. Accordingly, the order passed under section 148A(d) and consequential notice were set aside. (AY. 2016-17)
Tirupati Trading Corporation v. ACIT (2024) 296 Taxman 535 (Delhi)(HC)

2118 **S. 148A: Reassessment-Conducting inquiry, providing opportunity before issue of notice-Unexplained expenditure-Bogus purchases-Principle of natural justice-Only two days to file the reply-Order passed is set aside. [S. 69C, 148A(b), 148A(d), Art. 226]**
Assessing Officer issued on assessee two notices under section 148A(b) alleging that assessee made bogus purchases and being not persuaded by replies filed by assessee passed an order under section 148A(d). On writ the Court held that since minimum statutory time frame provided under section 148A(b) for filing response is seven days and in instant case Assessing Officer gave assessee two days to file response to latter notice, impugned order deserved to be set aside with liberty to Assessing Officer to pass a fresh order. (AY. 2019-20)
Srivenkateshwar Tradex (P.) Ltd. v. P CIT (2024) 296 Taxman 76 (Delhi)(HC)

2119 **S. 148A: Reassessment-Conducting inquiry, providing opportunity before issue of notice-Co-operative societies-Interest received from Co-Operative banks-Entitle to exemption. [S. 2(19), 80P(2) (a)(i), 80P(2)(d), 148A(b), 148A(d), Tamil Nadu Co-Operative Societies Act, 1983, Co-Operative Societies Act, 1912, Art. 226]**
Assessing Officer issued notice under section 148 of the Act for denying the claim under section 80P on ground that deduction was available only for income and interest received from co-operative society and not from co-operative bank. On writ, allowing the petition, the Court held that the assessee produced a document to show that Co-operative Bank, where investments were made was registered under Tamil Nadu Co-operative Societies Act, 1983-Whether since investment was made by assessee in a co-operative bank registered under Co-operative Societies, assessee would be entitled to claim benefit under section 80P(2)(d). Accordingly the reassessment notice and order disposing the objection. is quashed. Relied on *Totagars Co-Operative Sale Society v. ITO (2010 188 Taxman 282/ 322 ITR 283 (SC) and CIT v. Salem Agricultural Producers Co-operative Marketing Society Ltd. [2016] 76 taxmann.com 225 (Mad.)(HC).* (AY. 2016-17, 2017-18)
Thorapadi Urban Co-op Credit Society Ltd. v. ITO (2024) 296 Taxman 250 (Mad.)(HC)

S. 148A: Reassessment-Conducting inquiry, providing opportunity before issue of notice-Notice-A notice under section 148A(b), dated 30-3-2023, was served upon assessee to file a response by 10-4-2023-Assessee sent a communication dated 14-4-2023 explaining difficulty in filing response by 10-4-2023 as same was served on 14-4-2023-Order passed without considering the reply-Order and notice is set aside. [S. 148, 148A(b), 148A(d), Art. 226] 2120

A notice under section 148A(b), dated 30-3-2023, was served upon assessee to file a response by 10-4-2023. Assessee sent a communication dated 14-4-2023 explaining difficulty in filing response by 10-4-2023 as same was served on 14-4-2023 Order passed without considering the reply. On writ, the Court set aside the notice and order with liberty to pass fresh order. (AY. 2019-20)

E. Construct FZ LLC v. ACIT (2024) 296 Taxman 440 (Delhi)(HC)

S. 148A: Reassessment-Conducting inquiry, providing opportunity before issue of notice-Unexplained investments-Act does not contemplate any detailed adjudication on merits of information available with Assessing Officer at stage of passing order under section 148A(d)-Writ petition is dismissed. [S. 69, 148, 148A(b), 148A(d), Art. 226] 2121

The assessee filed writ petition challenging the order passed under section 148A(d) and notice issued under section 148 of the Act. Dismissing the petition the Court held that, Act does not contemplate any detailed adjudication on merits of information available with Assessing Officer at stage of passing order under section 148A(d) of the Act. The issues which require determination at stage of reassessment proceedings and in respect of which departmental remedy is otherwise available are not required to be determined at stage of decision by assessing authority under section 148A(d) of the Act. (AY. 2015-16)

Vivek Saran Agarwal v. UOI (2024) 296 Taxman 281/ 465 ITR 584/ 338 CTR 620 (All.)(HC)

S. 148A: Reassessment-Conducting inquiry, providing opportunity before issue of notice-Whether TOLA is applicable for Assessment Year 2015-2016 and whether any notice issued under Section 148 of the Act after 31st March 2021 will travel back to the original date?-Held No-Whether the notice dated 27th August 2022 issued under Section 148 of the Act is barred by limitation as per the first proviso to Section 149 of the Act?-Held yes-Whether the impugned notice dated 27th August 2022 is invalid and bad in law as the same has been issued without a DIN?-Held Yes-Whether the impugned notice dated 27th August 2022 is invalid and bad in law being issued by the JAO as the same was not in accordance with Section 151A of the Act?-Held Yes-Whether the issues raised in the impugned order show an alleged escapement of income represented in the form of an asset or expenditure in respect of transaction in relation to an event or an entry in the books of account as required in Section 149(1)(b) of the Act?-Held No-Whether respondent no. 1 has proposed to reopen on the basis of change of opinion and if it is permissible? (a). on the basis of change of opinion-Held yes (b) if it is permissible?-Held No-When the claim of deduction under Section 80JJAA of the Act has been consistently allowed in favour of petitioner by the Assessing Officers/ Appellate Authorities in the earlier years, can the Assessing Officer have a belief that there is escapement of income? Held No-Whether the approval granted by the Sanctioning Authority was valid?-Held 2122

Yes-Writ petition is allowed and notice and consequential orders are quashed. [S. 80JJAA, 147, 148, 149, 149(1(b) 151A, Art. 226]

Petitioner is engaged in information technology consulting, software development and business process services. The petitioner has claimed deduction under section 10AA, and 80JJA of the Act. The assessment was completed under section 143(3) of the Act. The reassessment notice was issued under section 148 of the Act on 8th April, 2021. the petitioner, filed a writ petition challenging the notice issued under Section 148 of the Act on the ground that the said notice has been issued on the basis of the provisions which have ceased to exist and are no longer in the statute. The petition was allowed on 29th March 2022 and the Court held that the notice dated 8th April 2021 was invalid. On a Special Leave Petition that the Revenue had filed in the case of *UOI. v. Ashish Agarwal (2022) 444 ITR 1 (SC)*, the Hon'ble Apex Court, in exercise of jurisdiction under Article 142 of the Constitution of India, passed orders with respect to the notices and inter alia held that the notices issued under Section 148 of the Act after 1st April 2021 be treated as notice issued under Section 148A(b) of the Act and provided for time lines to be followed by the Assessing Officers for providing assessees the information and material relied upon by the Revenue for initiating reassessment proceedings. The Hon'ble Apex Court also clarified that all the defences available to assessees under the provisions of the Act would be available to assessee. The Assessing Officer passed the order under section 148A(d) after considering the objections, order under section 148A(d) was passed. The petitioner challenged the said order by filing writ petition before High Court. The Honourable High Court has framed the following issues for consideration :

(1) Whether TOLA is applicable for Assessment Year 2015-2016 and whether any notice issued under Section 148 of the Act after 31st March 2021 will travel back to the original date?
(2) Whether the notice dated 27th August 2022 issued under Section 148 of the Act is barred by limitation as per the first proviso to Section 149 of the Act?
(3) Whether the impugned notice dated 27th August 2022 is invalid and bad in law as the same has been issued without a DIN?
(4) Whether the impugned notice dated 27th August 2022 is invalid and bad in law being issued by the JAO as the same was not in accordance with Section 151A of the Act?
(5) Whether the issues raised in the impugned order show an alleged escapement of income represented in the form of an asset or expenditure in respect of transaction in relation to an event or an entry in the books of account as required in Section 149(1)(b) of the Act?
(6) Whether respondent no. 1 has proposed to reopen on the basis of change of opinion and if it is permissible?
(7) When the claim of deduction under Section 80JJAA of the Act has been consistently allowed in favour of petitioner by the Assessing Officers/ Appellate Authorities in the earlier years, can the Assessing Officer have a belief that there is escapement of income?
(8) Whether the approval granted by the Sanctioning Authority was valid?

After a detailed discussion and considering the submissions of the Assessee and Revenue, the Honourable Court answered the questions as under ;

Issue no.	Issue	Answered
01	Whether TOLA is applicable for Assessment Year 2015-2016 and whether any notice issued under Section 148 of the Act after 31st March 2021 will travel back to the original date?	No
02	Whether the notice dated 27th August 2022 issued under Section 148 of the Act is barred by limitation as per the first proviso to Section 149 of the Act?	Yes
03	Whether the impugned notice dated 27th August 2022 is invalid and bad in law as the same has been issued without a DIN?	Yes
04	Whether the impugned notice dated 27th August 2022 is invalid and bad in law being issued by the JAO as the same was not in accordance with Section 151A of the Act?	Yes
05	Whether the issues raised in the impugned order show an alleged escapement of income represented in the form of an asset or expenditure in respect of transaction in relation to an event or an entry in the books of account as required in Section 149(1)(b) of the Act?	No
06	Whether respondent no. 1 has proposed to Reopen a. on the basis of change of opinion and; b. if it is permissible?	 Yes No
07	When the claim of deduction under Section 80JJAA of the Act has been consistently allowed in favour of petitioner by the Assessing Officers/ Appellate Authorities in the earlier years, can the Assessing Officer have a belief that there is escapement of income?	No
08	Whether the approval granted by the Sanctioning Authority was valid?	Yes

Relied upon *Godrej Industries Ltd. vs. The Assistant Commissioner of Income Tax and Ors 2024 SCC OnLine Bom 681*

Ashok Commercial Enterprises v. Assistant Commissioner of Income Tax (2023) 459 ITR 100

Principal Commissioner of Income Tax vs. Tata Medical Center Trust (2023) 459 ITR 155 (Cal)(HC)(WP No. 1778 of 2023 dt. 3rd May, 2024) (AY. 2015-16)

Hexaware Technologies Limited v. ACIT [2024] 162 taxmann.com 225/ 464 ITR 430 / 338 CTR 536 (Bom)(HC)

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S. 148A: Reassessment-Conducting inquiry, providing opportunity before issue of notice-Non-resident of Indian –Jurisdiction to be checked at the time of issue of notice-The Honourable Curt also observed that the Assessing Officer has taken dishonest stand-Notice and consequential order passed by the Assessing Officer for the relevant year is quashed-. [S. 120, 148,148A(b), 148A(d), Art. 226]

The petitioner is a Non-resident Indian from the Assessment year 2017-18 to 2023-24. During the year under consideration i. e., AY 2016-17 the Petitioner was a resident.

In March 2023 a Notice under section 148A(b) of the Income-tax Act, 1961 (Act) was issued by the jurisdictional Assessing Officer and not from the International ward on the ground that there was no time to migrate the PAN to International ward. On Writ, it was held that the jurisdiction should be checked at the time of issuance of the Notice and according to CBDT notification no. No. 57 of 2014 dated November 03, 2014, issued under Section 120 of the Act, the Officer from the International Tax Ward is the officer having jurisdiction over the Petitioner and should have issued the Notice. Further, there was an admission by the Jurisdictional Assessing Officer that he had no jurisdiction, but because there was no time to migrate the PAN at that stage he issued the reassessment notice and the High Court was not satisfied with the said explanation. The Notice under section 148A(b) of the Act, Order passed under section 148A(d) of the Act and Notice issued under section 148 of the Act were quashed. The Honourable Curt also observed that the Assessing Officer has taken dishonest stand. Referred *CIT v. M. I. Builders (P.) Limited [2014]44 taxmann.com 360 (/349 ITR 271 All)(HC), Pavan Morarka v. ACIT [2022]136 taxmann.com 2 (Bom)(HC) (AY. 2016-17) (WP No. 1933 of 2023 dt. 28-3-2024) Nimir Kishore Mehta v. ACIT (2024) 161 taxmann.com 553 (Bom)(HC) www.itatonline.org*

2124 **S. 148A: Reassessment-Conducting inquiry, providing opportunity before issue of notice-Assessment year 2013-14-Six years expired on 31st March, 2020-Notice issued on 28th July, 2022-Notice issued beyond six years-Barred by limitation-Taxation and other laws (Relaxation and Amendment of certain provisions, Act, 2020 (TOLA) was not applicable for the Assessment year 2013-14-Instructions are not binding on the assessee-Validity of notice must be judged on the basis of the law existing on the date on which such notice is issued-Notice and order was quashed as barred by limitation. [S. 148, 148A(b), 148A(d), 149 (1), 151,151A, Limitation Act, 1963, TOLA, S. 3(1), Art. 142, 226]**

The petitioner challenged the notice dated 28th July 2022 issued under Section 148 of the Income-tax Act, 1961 seeking to reopen petitioner's assessment for AY 2013-14 on various grounds. One of the ground of challenge was the notice was barred by limitation and the Taxation and other laws (Relaxation and Amendment of certain provisions) Act, 2020 (TOLA) has no application to AY. 2013-14. For AY 2013-14, the time limit to issue a notice under Section 148 of the Act had already expired on 1st April 2021. On the said date, the assessee had a vested right, which de hors the 1st proviso to the amended Section 149 of the Act, could not be taken away and thus, based on the well settled principles of law, the reopening of the AY 2013-14 after 31st March 2021 is invalid, without jurisdiction and barred by limitation. In a detailed order the Honourable High Court considering various case laws on the subject and provisions, the Court upheld the contention of the petitioner and held that for AY 2013-14, the time limit to issue a notice under Section 148 of the Act had already expired on 1st April 2021. The limitation period, as extended by TOLA, expired on 31st March 2021. However, in the present case, the reopening notice has been issued in July 2022 and, therefore, beyond the statutory time limit. The Hon'ble Supreme Court, while invoking powers under Article 142, consciously and categorically granted liberty to assessees to raise all defences available to the assessee, including the defences under Section 149 of the Act. This specific and express directions cannot be set at naught. Accepting this

contention of the Revenue would be a travesty of justice. Accordingly the notice issued under Section 148 of the Act, for AY 2013-14 is issued beyond the period of limitation hence the notice and consequential orders also quashed. (AY. 2013-14)
New India Assurance Company Ltd v. ACIT (2024) 337 CTR 257 (Bom)(HC)

S. 148A: Reassessment-Conducting inquiry, providing opportunity before issue of notice-Alternative remedy-The High Court dismissed the writ filed by the assessee against the assessment order with direction to avail alternative available under the Act as the assessee had failed to point out any procedural irregularity or illegality in the proceedings. [S. 148A(b), 148A(d), Art. 226] 2125

The assessee filed writ challenging the order passed by the AO u/s. 148A (d) of the Act and consequential assessment order. However, the assessee failed to point out any irregularity or illegality in the proceedings. The High Court noted that the AO had passed well-reasoned assessment order based on facts and evidences. Hence, in view of alternative remedy available to the assessee, the High Court dismissed the writ petition filed. (AY. 2016-17)
Shyam Sundar Dhanuka v. UOI (2023) 156 taxmann.com 499 /(2024) 461 ITR 25 (Cal) (HC)
Editorial :Order of single Judge is affirmed Shyam Sundar Dhanuka v. ITO (2024)461 ITR 22 (Cal)(HC)

S. 148A: Reassessment-Conducting inquiry, providing opportunity before issue of notice-Advanced loans-Alternative remedy-Writ petition is dismissed. [S. 131(IA), 148A(b), 148A(d), Art. 226] 2126

Assessee is a partnership firm and filed its return of income for AY 2019-20 declaring total income of Rs. NIL. DIT(Inv.), Ghaziabad issued summons u/s. 131(1A) requiring petitioner to furnish details and purpose of loan advanced to two ladies of Rs. 1.75 Crores. Subsequently, Notice u/s. 148A(b) issued upon the assessee firm that income not commensurate with transaction of Rs. 1.75 Crores, to which the petitioner filed reply on 27.03.2023. AO passed Order u/s. 148A(d) rejecting the objections and issued Notice u/s. 148. High Court observed that detailed adjudication on the merits of information available with the AO at the stage of passing order under section 148A(d) of the Act. Merits of the information referable to Section 148A thus remains subject to the reassessment proceedings initiated vide notice u/s. 148 of the Act. The scope of decision under section 148A(d) is limited to the existence or otherwise of information which suggests that income chargeable to tax has escaped assessment. High Court relied on the decision of Hon'ble Supreme Court in the case of *Anshul Jain v. PCIT [2022] 499 ITR 256 (SC)* whereby it was observed that if the petitioner had any grievance on merits, the same has to be agitated before the AO during the reassessment proceedings and interference of Court is not called for. Writ petition was dismissed accordingly. (AY. 2019-20)
Sidhbali Kripa Enterprises v. ITO (2024) 296 Taxman 32 (All) (HC)

2127 **S. 148A: Reassessment-Conducting inquiry, providing opportunity before issue of notice-Unexplained expenditure-Bogus purchases)-No opportunity of personal hearing granted-Violation of principle of natural justice-Matter remanded-The assessee is directed to file objections with supportive documents. [S. 148, 148A(b) 148A(d), Art. 226]**

On appeal against the judgement of single judge, the Hon'ble High Court observed that the assessee was not provided opportunity of personal hearing. Therefore, the assessing officer while passing the order under section 148A(d) violated the principles of natural justice. Accordingly, the Hon'ble HC held that the order passed under section 148A(d) is to be treated as a notice under section 148A(b). Further, the Hon'ble High Court directed the assessee to file further objections along with supportive documents and the assessing officer to pass fresh order after granting opportunity for personal hearing. (AY. 2019-20)

Nitin Agarwal v. ITO (No. 2) [2023] 157 taxmann.com 35 / (2024) 460 ITR 323 (Cal) (HC)

Editorial : Refer order of single judge, Nitin Agarwal v. ITO (NO. 1) (2024)460 ITR 321 (Cal)(HC)

2128 **S. 148A: Reassessment-Conducting inquiry, providing opportunity before issue of notice-Unexplained investments-Notice not disclosing the additions to be made-Matter remanded. [S. 69A, 148A(b), 148A(d), Art. 226]**

Held that that there was no specific documents based on which allegation of escaped income was raised. Except for description of unexplained investment with respect to land and vehicle and amount of escaped income proposed, nothing else was stated. As sufficient material regarding assets on which investments were alleged to have been made were not disclosed in notice under section 148A(b) and also, a corrigendum containing specification with respect to unexplained investments was issued by department more than two months after order under section 148A(d) was passed which vitiated order. Order under section 148A(d) of the Act is quashed. Directed to pass the order after giving a reasonable opportunity to the appellant.

Lakhendra Kumar Raushan Lakhendra Kumar Roushan v. PCIT (2024) 296 Taxman 526/ 336 CTR 186/ 467 ITR 549 (Patna)(HC)

2129 **S. 148A: Reassessment-Conducting inquiry, providing opportunity before issue of notice-No violation of principle of natural justice-Loan transactions-Question of fact-Writ petition is dismissed. [S. 69C, 148A(b), 148A(d), Art. 226]**

The assessee sought to challenge the order passed u/s. 148A(d) of the Act on the ground that reopening was sought based on report of Directorate General of Income-tax (Investigation) wherein some remark was made as 'potential borrower/lender'. However, the Court noted that the said order referred to cash loans being availed by the assessee from finance broker named Kaseras attracting provisions of section 69C, 269SS, 269T and other related penal provisions of the Act. Court also noticed that order was well reasoned and there was no violation of principles of natural justice nor order lacked inherent jurisdiction. Hence, considering case involved scrutiny of facts, evidence, Court declined to interfere. Court also directed to cause enquiry of person who affirmed the petition on behalf of the assessee. (AY. 2016-17)(SJ)

Shyam Sundar Dhanuka v. ITO (2024) 461 ITR 22 (Cal)(HC)

Editorial : Affirmed by division bench, Shyam Sundar Dhanuka v. UOI (2023) 156 taxmann.com 499 /(2024) 461 ITR 25 (Cal)(HC)

S. 148A: Reassessment-Conducting inquiry, providing opportunity before issue of notice-Violation of principles of natural justice-Notice and order is quashed-The Assessing Officer may proceed to issue notice as per law by providing a reasonable opportunity of hearing to the assessee [S. 148A(b), 148A(d), Art. 226] 2130

The assessee, a senior citizen, was issued notice u/s. 148A(b) for A. Y. 2015-16 but the same was not responded. Hence, the AO passed order u/s. 148A(d) and issued notice u/s. 148. During reassessment proceedings, the assessee called for details related to investment in property, deposits, etc as the assessee had denied of having carried any such transactions. Without providing details requested, the AO completed the assessment. Hence, the assessee challenged proceedings u/s. 148A, issue of notice u/s. 148 and consequential assessment order and notices issued. The High Court allowed the petition and set aside the impugned orders with direction to pass fresh orders after providing required details and complete the assessment. The High Court held that orders should always be speaking orders safeguarding the interests of both the assessee and the Revenue. (AY. 2015-16)(SJ)

Gubbi Chandananda Jagadeesh v. NFAC (2024) 461 ITR 10 (Karn)(HC)

S. 148A: Reassessment-Conducting inquiry, providing opportunity before issue of notice-Mere failure to file reply cannot be the ground to issue notice u/s 148-Even in ex-parte order, the authority has to record reasons for coming to a conclusion as to why the case has been taken out for re-opening of the assessment-Matter restored to the Assessing Officer to the stage of notice u/s. 148A(b) of the Act. [S. 148, 148A(b), 148A(d) Art. 226] 2131

The assessee did not file its reply to notice issued u/s. 148A (b) of the Act for A. Y. 2018-19 even though 3 adjournments were granted. Therefore, the AO passed order u/s. 148A (d) on account of default of the assessee in not submitting the reply to the show cause notice considering it was a fit case to issue notice under section 148 of the Act. The AO also passed consequential assessment order. The assessee challenged under writ the order passed u/s. 148A (d) as it was non-speaking and also the assessment order passed u/s 147. The High Court held that even in an ex parte proceedings, the authority has to record reasons for coming to a conclusion as to why the case has been taken out for re-opening of the assessment. The matter was restored to the AO at the stage of notice u/s. 148A(b) of the Act but the assessee was precluded from raising issue related to limitation. (AY. 2018-19)

GSP Piling Constructions (P.) Ltd. v. ACIT (No 2) (2023) 156 taxmann.com 665 (2024) 461 ITR 59/ 296 Taxman 524 (Cal)(HC)

Editorial: GSP Piling Constructions (P.) Ltd. v ACIT (No 1)(2024) 461 ITR 45 (Cal)(HC)

2132 **S. 148A: Reassessment-Conducting inquiry, providing opportunity before issue of notice-Cash deposits-Cash was withdrawn and redeposited in the bank account-No tangible material-Reassessment notice is held to be bad in law. [S. 148, 148A(b), 148A(d), Art. 226]**

Allowing the petition the Court held that AO wanted to verify the cash deposited in the bank account of the assessee by disregarding the explanation of the assessee on the ground that no prudent businessman will simply withdraw crores of cash from his bank account and again will deposit it at various stage. This is merely personal opinion of the AO. However, for the purpose of reopening an assessment there should be a tangible material placed by the assessing officer to show that there was escapement of income from the payment of income tax. This being conspicuously absent, notice issued under section 148 of the Act is bad in law. (AY. 2017-18)

Dinesh Kumar Goyal, HUF v. ITO (No. 2) (2024) 461 ITR 113 (Cal)(HC)

Editorial : Refer, Dinesh Kumar Goyal, HUF v. ITO. (No. 1) (2024)461 ITR 111 / 161 taxmann.com 584 (Cal)(HC)

2133 **S. 148A: Reassessment-Conducting inquiry, providing opportunity before issue of notice-Premature-Before issue of notice u/s 148-Writ petition is dismissed. [S. 148, 148A(b), 148A(d), Art. 226]**

Dismissing the petition the Court held that the order under section 148A(d) is at a stage prior to issuance of notice under section 148. Unless glaring omissions are demonstrated or the conditions precedent for exercise of the power to reopen assessment are not complied with, a writ court would not ordinarily interfere with an order passed under section 148A(d) inasmuch as the proceedings are at a very nascent stage even prior to issuance of the statutory notice under section 148. (AY. 2015-16)

Yellaiah Setty v. Asst. CIT (2024) 461 ITR 107 (Telangana)(HC)

2134 **S. 148A: Reassessment-Conducting inquiry, providing opportunity before issue of notice-Matter restored to the AO as the main contention of the assessee that it had not claimed any deduction for such liability was not considered while passing order u/s. 148A (d) of the Act. [S. 148A(b), 148A(d), Art. 226]**

The AO had sought to reopen the assessment in respect of the increase in liability to pay Works Contract Act noted by him as income escaping assessment. The assessee replied that no deduction was claimed in respect of impugned liability. However, the AO passed order u/s. 148A (d) of the Act without dealing with this submission. Court held that the Assessing Officer had not considered the crucial fact that the assessee had never claimed deduction concerning unpaid taxes. The order passed under section 148A(d) was set aside. The Assessing Officer was to accord opportunity of personal hearing to the assessee and carry out a de novo enquiry (AY. 2016-17)

Alankar Apartments (P.) Ltd. v. DCIT (2023) 151 taxmann.com 67 / (2024) 461 ITR 53 (Delhi)(HC)

S. 148A: Reassessment-Conducting inquiry, providing opportunity before issue of notice-Resident of Uganda-Mutual fund investment-Source of investments coming from Non-Resident External Accounts Beyond Reach Of Authorities-No Tangible material for belief that income had escaped assessment-Notice not valid. [S. 10(4), 148, 148A(b), 148A(d), Art. 226] 2135

The AO sought to reopen the assessment of the assessee, who was resident of Uganda, on the basis of information received that the assessee had indulged in transactions of time deposits and mutual fund investments but did not file return of income. The assessee submitted all the related details before the AO. However, the AO passed order u/s. 148A(d) holding that it was a fit case for issuance of notice u/s. 148 of the Act. The assessee challenged the same under Writ. The High Court accepted the contentions of the assessee that all investments were from non-resident (External) accounts and could not be subject of tax in accordance with the provisions of section 10(4) of the Act. Accordingly, the High Court held that impugned order was without jurisdiction. (AY. 2018-19)

Nitin Mavji Vekaria v. ITO (2024) 461 ITR 18 (Guj)(HC)

S. 148A: Reassessment-Conducting inquiry, providing opportunity before issue of notice-Grant of approval without application of mind-Benefits of giving opportunity of hearing after issue of initial notice under Section 148A(b)-Order passed under Section 148A(d) without giving requested opportunity of hearing-Approval by Principal Commissioner without application of mind-Order and consequent notice is set aside. [S. 147, 148, 148A(b), 148A(d), 149(1)(b), 151, Art. 226] 2136

On writ, allowing the petition the Court held that the application for approval, recommendation and the grant of approval under section 151 had all been made by the authorities mechanically and without application of mind. In the form submitted for approval under section 151 for issue of notice under section 148, in row 9, it was mentioned "time limit for current proceedings covered under section 149(1)(b) for more than three years but not more than ten years" and row 22 stated that the approval had been granted by Principal Commissioner. In the form in row 16 "whether personal hearing was requested by the assessee", the answer was shown as "No". In respect of rows 9 and 22, there had been non-application of mind by the Assessing Officer seeking approval, the Additional or Joint Commissioner who had recommended it was a fit case and the Principal Commissioner who had granted approval because the time limit for the reassessment proceedings under section 147 should be covered under section 149(1)(a), i. e., for less than three years because the assessment year was 2019-20 and the notice issued under section 148A(b) was dated March 28, 2023. Non-application of mind even by the authority, who had filed the affidavit-in-reply. The order passed under section 148A(d) and the notice issued under section 148 were quashed and set aside. (AY. 2019-20)

Nikhil Chandrakant Dharia v. ITO (2024)469 ITR 262 / 151 taxmann.com 117 (Bom)(HC)

Editorial : SLP of Revenue is dismissed as the reasons for 201 days assigned for seeking condonation of delay are neither satisfactory nor sufficient in law to condone the same. ITO v. Nikhil Chandrakant Dharia (2024) 469 ITR 315 / 168 taxmann.com 41/ 302 Taxman 89 (SC)

2137 **S. 148A: Reassessment-Conducting inquiry, providing opportunity before issue of notice-Limitation-Interest-Notice and proceedings initiated beyond prescribed time-limit-Barred by limitation. [S. 148, 148A(b), 148A(d), 149(1)(b)]**
Held that as per Finance Act, 2021 notice under section 148 of the Income-tax Act, 1961 cannot be issued at any time for the relevant assessment year beginning on or before the April 1, 2021, if such notice could not have been issued at that time on account of being beyond the time-limit prescribed under clause 149(1)(b) thereof, as it stood immediately before the proposed amendment. What could not be done earlier, cannot be done even after the amendment. That is, if the notice is barred by limitation then, in the amended provision also, the notice is barred by limitation. Show cause notice u/s 148A(b) was issued on 24-5-2022, asking to furnish reply by June 8, 2022. Filed reply on 8th June 2022, Notice under section 148 was issued on July 31st, 2022. Even after assuming a period of 27 days (i. e. 16 days from 24th May to 8th June and 11 days from 28th June to 8th July) are excluded from the date of notice under section 148 issued on July 31, 2022 is barred by limitation. (AY. 2014-15)
Australia and New Zealand Banking Group Ltd. v. Dy. CIT (IT) (2024)115 ITR 113 (Mum) (Trib)

2138 **S. 148A: Reassessment-Conducting inquiry, providing opportunity before issue of notice-Delay condoned-Additional ground-Earlier orders passed on basis of notice under Section 148 is not existing on date of notice-Assessment is invalid and quashed. [S. 147, 253(5), ITATR. 11]**
Held that the old assessments have been passed on the strength of notices issued under section 148 of the Act which was not in existence on the day of its issuance, i. e., June 30, 2021. Therefore, no assessment orders could be passed. The assessment orders dated March 31, 2022 were invalid assessments and were quashed. (AY. 2018-19 to 2020-21)
G D Mother Educational Society v. ACIT (2024)115 ITR 594 / [2025] 170 taxmann.com 667 (Kol)(Trib)

2139 **S. 148A: Reassessment-Conducting inquiry, providing opportunity before issue of notice-Limitation-Notice issued on 30-6-2021 will not relate back to original date where limitation expired on 31-3-2021-Notice is barred by limitation-Order and consequential notice is set aside-Information from Investigation wing-Accommodation entries-Charges are incorrect-Assessment made without application of mind-Notice and order is quashed. [S. 147, 148, 148A(b), 148A(d)]**
Held that the notice issued under section 148 is issued after March 31, 2021, under the new regime of reassessment, which is barred by limitation. Hence, all subsequent proceedings on the basis of the notices, being not sustainable in law. Order is quashed. According to the assessee, per its books of account, there is no transactions with the four parties mentioned in the reasons recorded by the Assessing Officer. There is only one transaction with each of these parties of taking a short-term loan, which was repaid in about two years. The notice issued by the Assessing Officer under section 148A(b) had been comprehensively replied to controverting the allegations as incorrect and baseless. Assessment is quashed. (AY. 2014-15, 2016-17)
Venkateswar Medicare P. Ltd. v. ITO (2024)115 ITR 325 /231 TTJ 791 / 169 taxmann.com 460 (Kol)(Trib)

S. 148A: Reassessment-Conducting inquiry, providing opportunity before issue of notice-Following the ratio in *UOI v. Rajeev Bansal [2024] 167 taxmann.com 70 (SC)* the time limit for issue of notice was extended only up to 30-6-2021-Assessment year 2013-14 the notice was issued on 29-7-2022, for the Assessment year 2014-15 the notice was issued on 31-7-2022 and for the Assessment year 2015-16 the notice was issued on 28-7-2022-All the notices are barred by limitation-Reassessment is quashed. [S. 147, 148, 148A(b), 148A(d), 149(1), TOLA, S. 2, 3] 2140

The Assessment year 2013-14 was reopened by the jurisdictional Assessing Officer by issue of notice u/s 148 on 23-4-2021 on the basis of judgement in the case of *UOI v. Ashish Agarwal (2022)444 ITR 1/286 Taxman 183 (SC)* on the ground that notice issued under old law during the period 1-4-2021 to 30-6-2021 under old law deemed to be show cause notice issued under section 148A(b) of the Act under the new law. The AO has provided the information material relied upon for issue of notice under section 148 to the assessee on 28-5-2022 under section 148A(b) of the Act and order under section 148A(d) was passed and notice under section 148 was also issued on 29-7-2022. Similar notice was issued for the Assessment year 2014-15 on 31-7-2022 and for the Assessment year 2015-16 on 29-7-2022. For the Assessment year 2013-14 The learned CIT(A) quashed the notice relying on *Seimens Services Pvt Ltd v. Dy. CIT (2023)) 457 ITR 647 (Bom)(HC)*. For the Assessment year 2014-15 notice was quashed relying on *Godrej Industries Ltd v. ACIT. [2024] 160 taxmann.com 13 /338 CTR 25 (Bom)(HC)*. For the Assessment 2015-16 the notice was quashed relying on the decision in the case of *Hexware Technologies Ltd v. ACIT [2024] 162 taxmann.com 225/ 464 ITR 430 / 338 CTR 536 (Bom)(HC)* and held that notice issued u/s. 148 have been issued beyond the time limit of six years which had expired on 31/03/2022 and the notice has been issued after the due date. On appeal by the Revenue, the ITAT relying on the judgement of the Supreme Court in *UOI v. Rajeev Bansal [2024] 167 taxmann.com 70 (SC)*, referred para 19 (f) of the judgement wherein the Revenue concedes that for the A. Y. 2015-16, all notices issued on or after 1 April 2021 will have to be dropped as they will not fall for completion during the period prescribed under TOLA. Further, for the A. Y. 2013-14 and 2014-15 Revenue has accepted that the expiry of the limitation (TOLA) will expire on 30/06/2021. In para 54 the Supreme Court explained the extension of TOLA time limit till 30-6-2021. After analysing the ratio of the judgement in Rajeev Bansal (Supra), the Tribunal held that in all instances for the relevant assessment years under question the time limit was extended only up to 30-6-2021 for issue of notice under section 148 of the Act. Accordingly on the facts of the case for the Assessment year 2013-14 the notice was issued on 29-7-2022, for the Assessment year 2014-15 on 31-7-2022 and for the Assessment year 2015-16 the notice was issued on 28-7-2022. Thus all the years referred above, the original time limit for six years for the Assessment year 2013-14 was up to 30-3-2020, for Assessment year 2014-15 it was 31-3-2021 and for AY. 2015-16 it was 31-3-2022. Even under TOLA the time limit for issuance of notice has expired on 30-6-2021 as conceded by the Revenue before the Supreme Court. Accordingly the notice u/s. 148 for the AY. 2015-16 has been issued on 28/07/2022 which is admittedly barred by limitation under the new provision of Section 149(1) and it is not covered under TOLA. Accordingly, all the notices are quashed being barred by limitation. Accordingly, the Tribunal held that issue involved was squarely covered by the judgment of the Hon'ble Supreme Court in the case of Shri Rajeev Bansal (Supra), therefore, the same

has been decided on the principle laid down by the Hon'ble Supreme Court.. (AY. 2013-14, 2014-15, 2015-16) (ITA No. 4812/Mum/2024 / ITA No. 4814/Mum/2024 / ITA No. 4816/Mum/2024 dt. 7-11-2024.
ITO v. Pushpak Realities Pvt. Ltd. (Mum)(Trib) www.itatonline.org.

2141 **S. 148A: Reassessment-Conducting inquiry, providing opportunity before issue of notice-Initiated as per the decision of UOI v. Ashish Agarwal (2022) 286 Taxman 183/ 444 ITR 1 (SC)-Assessing Officer treated initial section 148 notice as section 148A(b) notice as per Supreme Court decision-Reassessment order was passed without issuing fresh section 148 notice-Order is without jurisdiction and void ab initio. [S. 147, 148, 148A(b), 148A(d)]**
Assessing Officer initiated reassessment proceedings under section 148 after 1-4-2021 without following amended procedure laid down in section 148A. Subsequently, initial section 148 notice was treated as section 148A(b) notice as per Supreme Court decision in *UOI v. Ashish Agarwal (2022) 286 Taxman 183/ 444 ITR 1 (SC).* On appeal the Tribunal held that reassessment order passed without issuing notice under section 148 would be liable to be treated as bad in law and deserved to be quashed. (AY. 2017-18)
Ranjit Singh. v. ITO (2024) 208 ITD 19 (Amritsar)(Trib.)

2142 **S. 148A: Reassessment-Conducting inquiry, providing opportunity before issue of notice-Sanction-Income escaped less than Rs. 50 lakhs-Notice issued after three years –Income from other sources-Notice is void ab-initio. [S. 56(2)(vii)(b), 148, 148A(b), 148A(d), 149, 151]**
Assessing Officer issued notice under section 148 on 24-7-2023 on basis of information received from DIT (I&CI) that there was an escapement of income to tune of Rs. 43. 32 lakhs under section 56(2)(vii)(b). Final assessment order was passed under section 147 read with section 144C (13) making an addition of Rs. 43. 32 lakhs under section 56(2)(vii)(b). Tribunal held that period of three years had elapsed from end of relevant assessment year and order dated 23-5-2022 was passed under section 148A(d) after obtaining approval of Principal Commissioner. Amount alleged to have escaped assessment was only Rs. 43. 32 lakhs, i. e. less than Rs. 50 lakh. Tribunal held that since notice was obtained in contravention of provisions of section 151 as sanction was not obtained from concerned Specified Authority but was also time barred as per provisions of section 149, same being void ab initio. Reassessment and final assessment order is quashed. (AY. 2017-18)
Manish Jagdish Joshi. v. CIT (2024) 208 ITD 432 (Mum) (Trib.)

2143 **S. 148A: Reassessment-Conducting inquiry, providing opportunity before issue of notice-Unexplained Moneys-Non-Resident-Erroneous facts-Reassessment order is quashed. [S. 69A, 148, 148A(b)]**
Assessing Officer issued a reassessment notice on ground that assessee had entered into four transactions which included purchase of immovable property, purchase and sale of equity shares and other financial transactions for which assessee had not filed his return of income. Assessing Officer passed draft assessment order determining total income after making addition/disallowance on short term capital gain and unexplained investment on

best judgment assessment for reason that assessee had been non compliant throughout assessment proceeding. Dispute Resolution Panel issued directions rejecting original draft assessment order passed by Assessing Officer for reason that Assessing Officer had reopened assessee's case based on erroneous facts and premise which did not relate to assesse. Pursuant to direction of Dispute Resolution Panel Assessing Officer passed final assessment order after making an addition as unexplained investment under section 69A. On appeal, the Tribunal held that order of Assessing Officer in reassessing a case on erroneous facts and on non application of mind had been reprimanded by various decisions of High Courts and Apex Court hence draft assessment order and consequential final assessment order is held to be invalid hence quashed. (AY. 2018-19)
Jagadeesan Mani. v. ITO, IT (2024) 208 ITD 641/114 ITR 92 (SN) (Mum) (Trib.)

S. 148A: Reassessment-Conducting inquiry, providing opportunity before issue of notice-Notice issued by the Jurisdictional Assessing Officer (JAO) instead of Faceless Assessing Officer-Notice is invalid. [S. 147, 148, 151A] 2144
Held that the notice issued by the Jurisdictional Assessing Officer (JAO) instead of Faceless Assessing Officer. Notice is invalid. (AY. 2016-17)
Swarn Singh v. ITO (2024) 163 taxmann.com 745 (Amritsar)(Trib)

S. 149 : Reassessment-Time limit for notice-Assessing Officer had proceeded without jurisdiction by applying amended provisions of section 149 to case in hand when he issued notice on 25-7-2022 overlooking fact that limitation had already expired on 31-3-2020-Reopening notice issued under section 148 is quashed. [S. 148, 149(1)(b) Art. 226] 2145
For the Assessment year 2013-14, a notice under section 148 on 25-7-2022 was issued to the petitioner. The Petitioner filed writ petition and contended that notice was issued beyond limitation as prescribed under provisions of section 149 as would apply to assessment year in question. Court held that as provisions of section 149 would apply, limitation to issue notice under section 148 would expire if four years but not more than six years had elapsed from end of relevant assessment year, as per provisions of section 149(1)(b), as provision stood prior to amendment as incorporated by Finance Act, 2022 brought into effect from 1-4-2022. On facts Section 148 notice was issued on 25-7-2022, which was almost two years after limitation period had expired on 31-3-2020, which was further extended upto 31-3-2021 because of notification issued as result of Covid-19 pandemic. The Assessing Officer had proceeded without jurisdiction by applying amended provisions of section 149 to case in hand when he issued notice on 25-7-2022 overlooking fact that limitation had already expired on 31-3-2020. Therefore, reopening notice issued under section 148 is quashed. Followed, *New India Assurance Company Ltd v. ACIT (2024) 158 taxmann.com 367 (Bom)(HC)* (AY. 2013-14)
Bhoomi Viral Shah v. ITO (2024) 300 Taxman 474 /(2025) 473 ITR 574 (Bom.)(HC)

S. 149 : Reassessment-Time limit for notice-Amount is less than 50 lakhs-Notice issued beyond three years-Order is barred by limitation. [S. 148, 148A(b), 148A(d), Art. 226] 2146
The Assessing Officer by notice dt. 16th March, 2022 called upon to assessee to file his response on or before 23rd March, 2022. It appears that the notice was never served on

the assessee, as in reply to the petition, the respondents have produced the envelope, by which the notice was sent to the assessee and was returned back 'undelivered to the respondent Department, wherein the same has been received in the office on 28th March, 2022. The postal receipt pertaining to sending of the notice indicates the date of 17th March, 2022. S. 148A(b) requires providing opportunity of being heard to the assessee by serving upon him/her notice to show-cause within such time, as may be specified in the notice being not less than seven days' but not exceeding thirty days from the date, on which such notice is issued. Both the terminal days have to be excluded for the purpose of complying with the requirement of words 'not less than.... days'. Allowing the petition, Court held that the notice dt. 16th March, 2022 was issued and posted on 17th March, 2022 and the date fixed for response was 23rd March, 2022. Excluding two days le., the date of sending of the notice as well the last date indicated, even if the notice was received by the assessee, the same falls short of seven days' period, as envisaged by provisions of s. 148A(b) and as such, for violation of mandatory provisions of s 148A(b), the notice issued to the assessee cannot be sustained. Followed Pioneer Motors (P) Ltd. v. Municipal Council, Nagrecoil AIR 1967 SC 684. Court also held that the amount is less than 50 lakhs hence the notice issued beyond three years and hence the order is barred by limitation. (AY. 2015-16)
Bijendra Singh v. PCIT (2024) 336 CTR 819 (Raj) (HC)

2147 **S. 149 : Reassessment-Time limit for notice-Search-There is no restriction of time period for issuance of notice under S. 148-Petition is dismissed. [S. 132, 132A, 148, 149(1), 153A, 153C, Art. 226]**
Dismissing the petition the Court held that Second proviso to S. 149(1) states that in cases where notice under S 153A or S. 153C is required to be issued in relation to a search conducted under S. 132 or books of account and other documents or any asset are requisitioned under S. 132A on or before 31st March, 2021, the time frame prescribed by S. 149(1) is inapplicable. In cases of search there is no restriction of time period for issuance of notice under S. 148. Accordingly the ground raised by assessee by relying upon second proviso to S. 149(1) is held to be not tenable.
Nitin Sharma v. PCIT (2024) 336 CTR 126 (MP)(HC)

2148 **S. 149 : Reassessment-Time limit for notice-Notice after three years-Limitation-Extension of limitation period under 2020 Act-Notice for Assessment Year 2016-17 issued after April 2021-Alleged escapement of income less than Rs. 50 Lakhs-Notice is barred by limitation. [S. 147, 148, 151, 156, Taxation and other Laws (Relaxation In Amendment Of Certain Provisions) Act, 2020, Art. 226]**
Allowing the petition the Court held that according to section 149 of the Income-tax Act, 1961 the limitation applied. Held, allowing the petition, that the notice dated July 21, 2022, issued under section 148, for the assessment year 2016-17 was barred by the limitation period prescribed under section 149 since the three-year time period had ended on March 31, 2020. Further, the notice was for alleged escaped income which was less than Rs. 50 lakhs and therefore, the benefit of the extended period of limitation beyond three years till ten years was not available. The initiation of reassessment proceedings under section 147 was without jurisdiction. If the foundation of any

proceeding was illegal and unsustainable, all consequential proceedings or orders were also bad in law. Accordingly, since the notice dated July 21, 2022, issued under section 148, was barred by limitation and was illegal, unsustainable and void ab initio and set aside, the subsequent reassessment order under section 147 and notice of demand under section 156 were also quashed and set aside. (AY. 2016-17)
Sevensea Vincom Pvt. Ltd. v. PCIT (2024) 465 ITR 331 /159 taxmann.com 500 (Jharkhand) (HC)

S. 149 : Reassessment-Time limit for notice-Finance Act, 2021-Search conducted in June, 2022-Relevant assessment year-Notice of reassessment on 31-3-2023 for Assessment Year 2013-14 is valid. [S. 149 153A, 153C, Art. 226] 2149
Dismissing the petition the Court held that since the search was conducted on June 9, 2022, in terms of the first proviso to section 149 read with unamended sections 153A and 153C and the amended section 148, Explanation 2, the Assessing Officer could and had rightly issued notice under section 148 of the Act for the assessment year 2013-14. As detailed in the seized documents the loan had been given at the interest rate of 1. 5 per cent. per month. However, enquires conducted by the Investigating Officer revealed that the loans had not been accounted for in the books of account of the assessee-company. Further the assessee-company in its return filed before the Department for the assessment year 2013-14, had declared its liability as nil. All these facts lead to the conclusion that there was no error in the action of the Assessing Officer in issuing the notice under section 148 of the Act. Finance Act, 2021 ([2021] 432 ITR (St.) 52). Prior to the amendment, the Assessing Officer in the case of search could assess in respect of six assessment years. Explanation 1 to section 153A was inserted with effect from April 1, 2017 by the Finance Act, 2017 ([2017] 393 ITR (St.) 1. (AY. 2013-14)
Devika Construction and Developers Pvt. Ltd v. PCIT (2024) 464 ITR 708 / 336 CTR 75 (Jharkhand)(HC)
Naresh Kumar Kejriwal v. PCIT (2024) 464 ITR 708 / 336 CTR 75 (Jharkhand)(HC)

S. 149 : Reassessment-Time limit for notice-Notices issued under unamended provision after 1-4-2021 for assessment year 2013-14-Notice is not barred by limitation. [S. 147, 148, Art. 226] 2150
On writ petitions challenging the notices dated March 27, 2023 issued under section 148 of the Income-tax Act, 1961 for reopening the assessments for the assessment year 2013-14 it was held that it could not be reopened in view of the amendment introduced by the Finance Act, 2021 ([2021] 432 ITR (St.) 52) (AY. 2013-14)
Saluja Steel And Power P. Ltd. v. ITD (2024) 464 ITR 724 (Jharkhand)(HC)
Santapuria Alloys P. Ltd v. ITD ((2024) 464 ITR 724 (Jharkhand)(HC)

S. 149: Reassessment-Time limit for notice-A notice issued within the statutory limitations, considering the extensions and exclusions per the proviso to the section, is deemed timely and valid. [S. 148, 148A(b), Art. 226] 2151
The case involved the validity of a notice issued under section 148 of the Income-tax Act, 1961, for reopening the assessment of the assessee for a given assessment year, on the ground of income escaping assessment. The revenue alleged that the assessee

had received accommodation entries from two parties, which were not disclosed in the return of income. The assessee challenged the notice on various grounds, including that it was barred by limitation, vague, unspecific, and without proper approval.
The Hon'ble High Court rejected the assessee's contentions and upheld the notice. The court held that the notice was issued within the period of three years from the end of the relevant assessment year, after excluding the time given to the assessee to respond to a prior notice under section 148A(b) of the Act, and extending the period by seven days, as per the fifth and sixth proviso to section 149(1) of the Act. The court also held that the notice was not vague or cryptic, as it set out the transactions alleged to have escaped assessment, and that the approval for issuing the notice was not required to be provided along with the notice but could be obtained by the assessee on request. (AY 2019-20)
Raminder Singh v. ACIT [2023] 156 taxmann.com 148 / [2024] 461 ITR 368 (Delhi)(HC)

2152 **S. 149 : Reassessment-Time limit for notice-Notice issued on 29-7-2022 for assessment year 2015-16-Last date for issuing notice under old provision was 31-3-2022-Notice is barred by limitation. [S. 147, 148]**
Tribunal held that reopening notice issued on 29-7-2022 for assessment year 2015-16 is barred by limitation, since last date for issuing such notice under old provision of section 149 was 31-3-2022. On facts, notice issued on 29-7-2022 is barred by limitation. (AY. 2015-16)
Purohit Food Products (P.) Ltd. v. ITO (2024) 208 ITD 407 (Mum) (Trib.)

2153 **S. 151 : Reassessment-Sanction for issue of notice –Failure to furnish approval of designated authority Order of High Court quashing the proceedings is quashed-SLP of Revenue is dismissed. [S. 147, 148, Art. 136]**
On a writ petition challenging the notice issued under section 148 of the Income-tax Act, 1961, and the order disposing of the assessee's objections thereto, on the ground that the reassessment proceedings were commenced without the approval of the specified authority, the High Court held that approval granted by statutory authorities had to be furnished to the assessee along with the reasons to believe that income chargeable to tax has escaped assessment, that the condition requiring the Assessing Officer to obtain prior approval of the specified authority was not fulfilled in the assessee's case, as otherwise, there was no good reason not to furnish it to the assessee along with the reasons for holding the belief that income otherwise chargeable to tax had escaped assessment, and that therefore, neither the notice issued under section 148 of the Act nor the order disposing of the assessee's objections were sustainable. On a petition for special leave to appeal to the Supreme Court, dismissing the petition, the Court held that in view of the categorical finding recorded in the judgment and in the facts of the case, no case for interference was made out under article 136 of the Constitution. (AY. 2011-12)
ITO v. Tia Enterprises Pvt. Ltd. (2024)468 ITR 10/301 Taxman 399 (SC)
Editorial : Tia Enterprises Pvt. Ltd v. ITO (2024) 468 ITR 5 /158 taxmann.com 63 (Delhi)(HC)

S. 151 : Reassessment-Sanction for issue of notice-After the expiry of four years-Sanction was issued by Joint Commissioner-Notice and order disposing the objection is quashed and set aside-Notice is issued in SLP filed by the Revenue. [S. 147, 148, 151(1), 151(2), Art. 136] 2154

The assessee filed writ petition to quash the reassessment proceedings which were initiated after the expiry of four years. Allowing the petition, the Court held that the Assessing Officer issued notice under section 148 beyond period of four years from end of assessment year and satisfaction under section 151 had been issued by Joint Commissioner, as satisfaction should have been of either Principal Chief Commissioner or Chief Commissioner or Principal Commissioner or Commissioner in accordance with section 151(1) of the Act. Notice issued under section 148 and order disposing the objection was quashed. Followed *J. M. Financial and Investment Consultancy Services (P.) Ltd. v. Asstt. CIT (2022) 215 DTR 98/ 327 CTR 458 /(2023) 451 ITR 205 (Bom)(HC).* Notice is issued in SLP filed by the Revenue. (AY. 2015-16)

Dy. CIT v. Thirdware Solution Ltd. (2024) 297 Taxman 8 (SC)

Editorial: Thirdware Solution Ltd v. Dy. CIT(2023) 146 taxmann.com. 364 (Bom)(HC)

S. 151 : Reassessment-Sanction for issue of notice-After the expiry of four years-Satisfaction recorded by Joint Commissioner-The notice issued under section 148 and order is set aside by High court-Notice is issued in SLP filed by the Revenue. [S. 147, 148, 151(1), Art. 136] 2155

Notice under section 148 was issue beyond a period of four years after obtaining the approval Joint Commissioner instead of Principal Chief Commissioner or Chief Commissioner. On writ, allowing the petition the Court held that since approval as required under section 151 had not been obtained, notice and order was quashed. Followed *J M Financial and Investment Consultancy Services (P.) Ltd. v. ACIT [2023] 451 ITR 205 (Bom.) (HC)*. Notice is issued in SLP filed by the Revenue. (AY. 2015-16)

ITO v. Pinki Rajesh Modi (2024) 297 Taxman 397 (SC)

Editorial: Pinki Rajesh Modi v. ITO (2023) 153 taxmann.com 469/(2023) 294 Taxman 491 (Bom)(HC)

S. 151 : Reassessment-Sanction for issue of notice-Non application of mind – Applicability of S. 50C to buyer-Reassessment notice and order is quashed. [S. 50C, 148, 148A(b), 148A(d), Art. 226] 2156

Allowing the petition the Court held that section 50C is not applicable to buyers hence the notice by the AO and sanction by PCIT being non application of mind, the reassessment notice is quashed. (AY. 2018-19)

Aruna Surulkar v. ITO (2024) 158 taxmann.com 677 (Bom)(HC)

2157 **S. 151 : Reassessment-Sanction for issue of notice –Notice issued after four or three years-Specified Authority for approval-Approval granted by Joint Commissioner-The authority statutorily empowered to confer approval would be the Principal Chief Commissioner or Chief Commissioner or Principal Commissioner or Commissioner-Notice and reassessment proceedings invalid. [S. 147, 148,-Taxation And Other Laws (Relaxation And Amendment Of Certain Provisions) Act, 2020, S. 3. Art. 226]**

The batch of writ petitions assails the validity of the reassessment action initiated by the respondents under section 148 of the Act and pertaining to assessment year 2015-16 were assailed before the Court was a violation of the provisions contained in section 151. The sanction was granted by Joint Commissioner. Allowing the petitions, the Court held that (i) tested on the principles enunciated in Suman Jeet Agarwal(2022) 449 ITR 517 (Delhi)(HC) the notices issued under section 148 for the assessment year 2015-16 had been issued and dispatched after April 1, 2021 but would be of little relevance or significance considering the fact that all the notices were approved by the Joint Commissioner, an authority recognised under the unamended section 151 of the 1961 Act. (ii) That section 3 of the 2020 Act established that where the time limit for the completion or compliance of any action under a specified Act were to fall between March 20, 2020 to December 31, 2020, the period for completion and compliance would stand extended up to March 31, 2021 or such other dates thereafter as may be specified by the Union Government by way of a notification which was lastly up to June 30, 2021. The Finance Act, 2021 ([2021] 432 ITR (St.) 52) was enacted thereafter and came into effect from April 1, 2021. The terminal point for initiation of reassessment for the assessment year 2015-16 in ordinary circumstances would have been March 31, 2020 and that date fell within the period stated in section 3 of the 2020 Act. Therefore, the period for issuance of notice for the assessment year 2015-16, stood extended up to June 30, 2021. (iii) That the fallacy of the submissions of the Revenue was even more evident on consideration of the fact that even if the reassessment actions were initiated as per the extended timelines in terms of the 2020 Act, and thus after the period of four years, section 151 incorporated adequate measures to deal with such a contingency and in unambiguous terms identified the authority for the purposes of sanction and approval. Section 151 distributed the powers of approval amongst a set of specified authorities based upon the lapse of time between the end of the relevant assessment year and the date when reassessment was proposed. Even if the reassessment was proposed to be initiated with the aid of the 2020 Act after the expiry of four years from the end of the relevant assessment year, the authority statutorily empowered to confer approval would be the Principal Chief Commissioner or Chief Commissioner or Principal Commissioner or Commissioner. It would only be in a case where the reassessment was proposed to be initiated before the expiry of four years from the end of the relevant assessment year that approval could have been accorded by the Joint Commissioner. Similar would be the position which would emerge if the actions were tested on the basis of the amended section 151 and which divided the power of sanction amongst two sets of authorities based on whether reassessment was commenced within three years or thereafter. (iv) That once it was conceded that the notice was issued four or three years after the end of the relevant assessment year, the approval granted by the Joint Commissioner would not be compliant with the scheme of section 151. The grant of approval by the Joint

Commissioner for issue of notice under section 148 for the assessment year 2015-16 was unsustainable. (v) That the contention of the Revenue that the use of the expression "sanction" in section 3 of the 2020 Act was meritless when the indisputable fact that the set of provisions which were concerned nowhere prescribed a time-frame within which sanction was liable to be accorded. "Sanction" when used in section 3 of the 2020 Act catered to those contingencies where a specified Act had prescribed a particular time limit within which an action could be approved. That was clearly not the position which obtained herein and hence the reassessment was unsustainable. The notices issued under section 148 based on a sanction obtained from the Joint Commissioner were quashed. (AY. 2015-16)
Abhinav Jindal HUF v. ITO (2024)468 ITR 787/ 166 taxmann.com 536 (Delhi)(HC)

S. 151 : Reassessment-Sanction for issue of notice –Notice issued after four or three years-Specified Authority for approval-Approval granted by Joint Commissioner-The authority statutorily empowered to confer approval would be the Principal Chief Commissioner or Chief Commissioner or Principal Commissioner or Commissioner-Notice and reassessment proceedings invalid. [S. 147, 148,148A(b), 148A(d), 151(ii)-Taxation And Other Laws (Relaxation And Amendment Of Certain Provisions) Act, 2020, S. 3. Art. 226] 2158
Allowing the petition the Court held that that since the notice under section 148 for the assessment year 2017-18 had been issued after a period of three years, the sanctioning authority had to be the Principal Chief Commissioner as provided under section 151(ii). The proviso to section 151 had been inserted only with effect from April 1, 2023 and, therefore, was not applicable. Hence, the sanction for passing of order under section 148A(d) and the consequent notice issued under section 148 were invalid and consequently, quashed and set aside. Followed *Siemens Finacial Services Pvt Ltd v. Dy. CIT (2023) 457 ITR 647 (Bom)(HC)* AY. 2017-18)
Balkrishna Barsha Sutar v. ITO (2024)468 ITR 348 (Bom)(HC)

S. 151 : Reassessment-Sanction for issue of notice –Failure to furnish approval of Designated Authority along with reasons recorded-Non application of mind-Notice and order disposing of objections is set aside. [S. 147, 148, Art. 226] 2159
On writ, allowing the petition, Court held that there was nothing contained in the order disposing of the objections raised by the assessee which would answer the poser raised by the assessee that there was no application of mind by the Principal Commissioner for initiation of reassessment proceedings under section 147 for the assessment year 2011-12. The only assertion made by the Revenue was that the Principal Commissioner had conveyed her approval under section 151 to the Assessing Officer by way of a letter but had not produced the letter despite the assessee's raising a specific objection that the Principal Commissioner had not applied his mind while granting approval for the commencement of reassessment proceedings. The condition requiring the Assessing Officer to obtain prior approval of the specified authority was not fulfilled, as otherwise, there was no good reason not to furnish it to the assessee along with the document which contained the Assessing Officer's reasons recorded for the belief that income otherwise chargeable to tax had escaped assessment. The notice issued under section

148 and the order disposing of the objections raised by the assessee were sustainable and hence set aside. (AY. 2011-12)
Tia Enterprises Pvt. Ltd. v. ITO (2024) 468 ITR 5/158 taxmann.com 63 (Delhi)(HC)
Editorial : SLP of Revenue dismissed, ITO v. Tia Enterprises Pvt. Ltd. (2024) 468 ITR 10/ 301 Taxman 399 (SC)

2160 **S. 151 : Reassessment-After the expiry of four years-Sanction for issue of notice – Recording of satisfaction-There is no requirement for the CIT to record his own reasons and it would suffice that he records the satisfaction regarding the reasons recorded by the AO. [S. 147, 148, Art. 226]**
Assessing Officer recorded reasons believing that income had escaped assessment. Commissioner recorded his satisfaction regarding reasons recorded by Assessing Officer. Thereafter, reopening notice was issued. Assessee contended that approval was not recorded as per section 151. On writ, petitioner contended that revenue had filed supplementary counter affidavit which spoke of approval of issue of reopening notice for relevant assessment year by Principal Commissioner and indicated reasons for belief entertained by Assessing Officer. Dismissing the petition, the Court held that section 151 requires Principal Commissioner to be satisfied of reasons recorded by Assessing Officer that it was a fit case for issuance of such notice where notice was issued beyond expiry of 4 years. There was no requirement for Commissioner to record his own reasons and it would suffice that he recorded satisfaction regarding reasons recorded by Assessing Officer. Notice is held to be valid. (AY. 2013-14)
Venky Steels (P) Ltd. v. CIT (2024) 340 CTR 957 / 242 DTR 237 / 167 Taxmann.com 60 / 301 Taxman 344/ (2025) 475 ITR 111 (Pat)(HC)
Editorial : Venky Steels (P.) Ltd v. CIT (2025] 304 Taxman 597 / 475 ITR 148 (SC)

2161 **S. 151 : Reassessment-Sanction for issue of notice-Mere use of expression "Yes I am satisfied" could not be considered to be a valid approval-Non application of mind-Reassessment notice is quashed. [S. 143(1), 147, 148, Art. 226]**
On writ against issue of notice under section 148 the Court held that
mere repeating of the words of the statute, mere rubber stamping of the letter seeking sanction or using similar words like 'Yes, I am satisfied' will not satisfy the requirement of law. Principal Commissioner has failed to satisfactorily record his concurrence. The mere use of expression 'Yes, I am satisfied' cannot be considered to be a valid approval as the same does not reflect an independent application of mind. The grant of approval in such manner is thus flawed in law. Accordingly, approval granted by the Principal Commissioner for issuance of notice under section 148 is not valid. Accordingly, the notice under section 148 is quashed and set aside. (AY. 2010-11)
Capital Broadways (P.) Ltd. v. ITO (2024) 301 Taxman 506 (Delhi)(HC)

2162 **S. 151 : Reassessment-Sanction for issue of notice-Beyond three years-Sanction-Specified Authority-Sanction from Principal Commissioner-Not from Principal Chief Commissioner or Principal Director General or Chief Commissioner or Director General and not under section 151(i)-Prior approval was taken from Principal Commissioner in terms of section 151(i) and not by specified authority under section**

151(ii)-Order as well as notice issued under section 148 is bad in law hence quashed and set aside. [S. 148, 148A(b), 148A(d), 151(i), 151(ii), Art. 226]

The assessee filed a writ petition challenging the order passed under section 148A(d) as well as the notice issued under section 148. On writ, assessee contended that the notice had been issued in breach of provisions of section 151 which provided for a sanction by the specified authority before issuance of notice. It was submitted that in the instant case, such sanction to issue the impugned notice was issued by the Principal Commissioner which itself was contrary to the provisions of section 151(ii), inasmuch as admittedly the impugned notice was issued after a period of more than three years having elapsed from that of the relevant assessment year 2016-17, hence, such sanction ought to have been issued by the Specified Authority as set out in section 151(ii) and not by an authority falling under clause (i) of the said provision. It was submitted that once such compliance itself was lacking, the impugned notice issued under section 148 would be rendered illegal, and on such count, would be required to be quashed and set aside. Court held that on a plain reading of section 148A it is clear that the Assessing officer before issuing any notice under section 148 is required to follow the procedure as set out in clauses (a) to (d) of section 148A. One of the pre-conditions as ordained by clause (d) of section 148A is that an order under such provision can be passed by the Assessing Officer only with the approval of Specified Authority. Thus, necessarily, when clause (d) of section 148A provides for prior approval of specified authority, it relates to the provisions of section 151 providing for 'Specified authority for the purposes of section 148 and section 148A. In the instant case, section 151 as amended by the Finance Act, 2021 and section 148A as also introduced by Finance Act, 2021 have become applicable. Although assessment year in question is 2016-17 in respect of which the assessment is sought to be reopened by issuance of notice under section 148, which is dated 30 July, 2022. Such amended provision would squarely become applicable since the date of notice under section 148 itself being 30 July, 2022. The record clearly indicates that the sanction in the present case was issued by the Principal Commissioner which can only be in respect of cases if three years or less than three years have elapsed from the end of the relevant assessment year, as would fall under the provisions of clause (i) of section 151. As in the instant case the assessment year in question is 2016-17 and the impugned notice itself has been issued on 30 July, 2022, it is issued after a period more than 3 years having elapsed from the end of the said assessment year, hence, clause (ii) of section 151 was applicable, which required the sanction to be issued by either Principal Chief Commissioner or Principal Director General or where there is no Principal Chief Commissioner or Principal Director General, Chief Commissioner or Director General for issuance of notice under section 148.

In the instant case, it is not in dispute that an appropriate sanction of the specified authority as per the provisions of section 151(ii) was not obtained and for such reason, certainly, the impugned notices would be rendered bad and illegal. The petition is allowed. Accordingly the notice issued under section 148 is quashed and set aside, as also the impugned order passed by the Assessing Officer under section 148A(d) is quashed and set aside. Followed *Siemens Financial Services (P) Ltd v. Dy. CIT (2023) 154 taxmann.com 159/ 457 ITR 647 (Bom)(HC)* (AY. 2016-17)

Cipla Pharma and Life Sciences Ltd. v. Dy. CIT (2024) 300 Taxman 295 (Bom.)(HC)

2163 **S. 151 : Reassessment-Sanction for issue of notice- Merely stating "Yes"-Non-application of mind-Notice And Reassessment Proceedings Invalid. [S. 147, 148, 260A]**
Dismissing the appeal of the Revenue, Court held that the Principal Commissioner had failed to satisfactorily record his concurrence. Mere penning down the expression "yes" could not be considered to be valid approval. Though the Assistant Commissioner had appended his signature by writing in his hand "Yes, I am satisfied", the Principal Commissioner had merely written "Yes" without specifically noting his approval while recording the satisfaction for issuance of notice under section 148 for reopening the assessment under section 147. Therefore, the order of the Tribunal holding that the Assessing Officer had initiated the reassessment proceedings on the basis of borrowed satisfaction and that the prescribed authority had granted approval under section 151 in a mechanical manner need not be interfered with. (AY. 2009-10)
PCIT v. Pioneer Town Planners Pvt. Ltd. (2024)465 ITR 356 /160 taxmann.com 652 (Delhi)(HC)

2164 **S. 151 : Reassessment-Sanction for issue of notice-Sanction of specified authority mandatory-Three years from the relevant assessment years-No approval of specified authority [S. 147, 148, Art. 226]**
Allowing the petition, Court held that there was no dispute that three years had elapsed from the end of the relevant assessment year the approval was sought from authorities specified in clause (i), as against clause (ii) of section 151. Hence the notices and orders in the writ petitions were liable to be quashed on the ground that there was no approval of the specified authority, as indicated in section 151(ii) of the Act. Court also held that section 151 of the Income-tax Act, 1961 was amended by the Finance Act, 2021. After amendment, section 151 has been split and the part which enjoins that the approval of the specified authority is mandatory stands embedded in the first proviso to section 148. The concerned specified authorities, depending on the applicable time frame, are adverted to in section 151 of the Act. Clauses (i) and (ii) of the amended section 151 clearly specify the authority whose approval can trigger the reassessment proceedings. Thus, if three years or less have elapsed from the end of the relevant assessment year, the specified authority who would grant approval for initiation of reassessment proceedings will be the Principal Commissioner or Principal Director or Commissioner or Director. However, if more than three years from the end of the relevant assessment year have elapsed, the specified authority for according approval for reassessment shall be the Principal Chief Commissioner or Principal Director General or, where there is no Principal Chief Commissioner or Principal Director General, Chief Commissioner or Director General. That the approval is mandatory is plainly evident on perusal of the first proviso appended to section 148 of the Act. (AY. 2016-17, 2017-18)
Twylight Infrastructure Pvt. Ltd. v. ITO (2024)463 ITR 702/336 CTR 800 (Delhi)(HC)

2165 **S. 151 : Reassessment-Sanction for issue of notice-More than three years from the relevant assessment year-Sanction for the order under s. 148A(d) was obtained from Principal CIT and not Principal Chief CIT-Reassessment proceedings are quashed [S. 147 148, 148A(b), 148A(d)]**
Held that order passed the order under s. 148A(d) after lapse of three years from the end of the relevant assessment year after obtaining the sanction from the Principal CIT and

not from the Principal Chief CIT, the reassessment proceedings are not valid. Followed *Siemens Financial Services (P) Ltd. v. Dy. CIT (2023) 334 CTR 825 / 230 DTR 225 / 154 taxmann.com 159 457 ITR 647 (Bom) (HC) (Bom)(HC).* (AY. 2016-17)
Goldiam International Ltd. v. DCIT (2024) 230 TTJ 1 / 238 DTR 33 / 38 NYPTTJ 411 (Mum)(Trib)
Goldiam Jewelry v. Dy. CIT v. DCIT (2024) 230 TTJ 1 / 238 DTR 33 / 38 NYPTTJ 411 (Mum)(Trib)
Editorial: Refer, UOI v. Rajeev Bansal (2024) 301 Taxman 238 / (2024) 469 ITR 46 (SC)

S. 151 : Reassessment-Sanction for issue of notice-Notice was issued before the expiry of four years from the end of the relevant assessment year-It should have been issued after obtaining the satisfaction of Jt. CIT-The approval obtained from the Principal CIT is not valid. [S. 147, 148, 151(ii)] 2166
Held that the return of income with the ITO, Ward-3(4), the notice under s. 148 issued by the said AO was valid notwithstanding that subsequently, the case of the assessee was transferred from the ITO, Ward-3(4), to ITO, Ward-3(1). However the notice under S. 148 was issued before the expiry of four years from the end of the relevant assessment year, it should have been issued after obtaining the satisfaction of Jt. CIT and, therefore, the approval obtained from the Principal CIT is not valid. (AY. 2015-16)
Kavita Raneja v. ITO (2024) 232 TTJ 129 (UO) (Jodhpur) (Trib)

S. 151 : Reassessment-Sanction for issue of notice –No approval is obtained before issue of reassessment notice-Re assessment is quashed as void ab-initio. [S. 147, 148] 2167
Tribunal held that as no approval under S. 151 is being obtained before issue of reassessment notice, re assessment is quashed as void ab-initio. (AY. 2011-12, 2012-13)
Uttarakhand Purv Sainik Kalyan Nigam Ltd. v. ITO (2023) 37 NYPTTJ 1627 / (2024) 227 TTJ 252 / 233 DTR 340 (Dehradun) (Trib)

S. 151 : Reassessment-Sanction for issue of notice –Joint Commissioner had merely written "Yes, I am satisfied" and not that "It is a fit case for issue of notice under Section 148"-Approval mechanical and not valid. [S. 148, 151(2)] 2168
Held that the Joint Commissioner had merely written "Yes, I am satisfied". He had not recorded satisfaction that "it is a fit case for issue of notice under section 148 " and therefore, the approval under section 151 was only mechanical and not a valid approval. Reassessment notice is quashed. (AY. 2014-15)
Dy. CIT v. Sandeep Bajaj (2024)113 ITR 8 (SN)(Delhi)(Trib)

S. 151 : Reassessment-Sanction for issue of notice-Beyond three years-Specified Authority-Sanction by Principal Commissioner of Income Tax-Reassessment notice and order is bad in law. [S. 148, 148A(b), 148A(d), 151(ii)] 2169
The notice under section 148 along with order passed under section 148A(d) has been issued on 22 July 2022 after obtaining approval of Principal Commissioner of Income-tax, Central-1. The sanction of notice has not been given by the specified authority in accordance with the law existing when sanction was obtained and where the AO has issued the reopening of notice beyond the period of three years, then such notice is

invalid and deserves to be quashed. Accordingly, the notice u/s. 148 is quashed and consequently, the entire reopening and re-assessment order is also quashed. (ITA No. 2884/Mum/2023 & Co. No. 120/M/2023, dt. 09/05/2024) (AY. 2017-18)
Parinee Housing Pvt. Ltd v. Dy. CIT (Mum)(Trib)

2170 **S. 151 : Reassessment-Sanction for issue of notice-Beyond three years-Specified Authority-Sanction by Principal Commissioner of Income Tax-Reassessment notice and order is bad in law. [S. 148, 148A(b), 148A(d), 151(ii)]**
The notice under section 148 along with order passed under section 148A(d) has been issued on 22 July 2022 after obtaining approval of Principal Commissioner of Income-tax, Central-1. The sanction of notice has not been given by the specified authority in accordance with the law existing when sanction was obtained and where the AO has issued the reopening of notice beyond the period of three years, then such notice is invalid and deserves to be quashed. Accordingly, the notice u/s. 148 is quashed and consequently, the entire reopening and re-assessment order is also quashed. (ITA No. 2884/Mum/2023 & Co. No. 120/M/2023, dt. 09/05/2024)(AY. 2017-18)
Parinee Housing Pvt. Ltd v. Dy. CIT (Mum)(Trib)(UR)

2171 **S. 151 : Reassessment-After the expiry of four years-Sanction for issue of notice-The absence of proper authorization from the designated officer renders the notice of reassessment under section 148 null and void from the outset, warranting its dismissal. [S. 127, 147, 148]**
The assessee, a proprietor, was engaged in the business of manufacturing and trading bullions, precious stones, studded jewellery and gold and diamond ornaments. He filed his return of income for the assessment year declaring his total income. The case was selected for scrutiny and the Assessing Officer made an addition on account of unverifiable purchases from parties. The assessee appealed against the addition and the CIT(A) deleted the same. The department's appeal before the Tribunal was also dismissed. Subsequently, the Assessing Officer reopened the assessment under section 147 of the Income Tax Act, 1961 (the Act) on the basis of information received from the Investigation Wing that one entity from whom the assessee had made purchases was a bogus entity managed by an individual, who was engaged in providing accommodation entries.
The Assessing Officer issued a notice under section 148 of the Act to the assessee and passed a reassessment order, making an addition as bogus purchase. The assessee challenged the validity of the reopening and the addition before the National Faceless Appeal Centre (NFAC), which upheld the action of the Assessing Officer. The assessee then filed an appeal before the Tribunal. Appeal was also on erroneous exercise of jurisdiction by the ITO at Delhi without due notice under section 127 on the transfer of jurisdiction.
The Tribunal held that the reopening of the assessment and the issuance of notice were invalid and void-ab initio, as the Assessing Officer had not obtained the proper sanction from the Joint-Commissioner of Income-tax as required under section 151(2) of the Act and had not issued the notice from the competent jurisdictional Assessing Officer as

there was no order under section 127 for transfer of the case from jurisdiction A to B. (AY. 2007-08)
Chirag Mishrimal Hirani v. Dy. CIT [2024] 109 ITR 40 (SN) (Surat)(Trib)

S. 151A : Faceless assessment of income escaping assessment-Reassessment-Notice issued by jurisdictional Assessing Officer and not as per S. 151A-Office Memorandum dt. 20th Feb., 2023 being F. No. 370153/7/2023-TPL issued by the CBDT has clarified that the JAO as well as units under NFAC have concurrent jurisdiction-Notice under S. 148 is not invalid on the ground that the same has been issued by the JAO and not by National Faceless Assessment Centre as per S. 151A. [S. 148, Art. 226] 2172
Dismissing the petition, Court held that Office Memorandum dt. 20th Feb., 2023 being F. No. 370153/7/2023-TPL issued by the CBDT has clarified that the JAO as well as units under NFAC have concurrent jurisdiction and therefore, impugned notice under s. 148 is not invalid on the ground that the same has been issued by the JAO and not by National Faceless Assessment Centre as per S. 151A. (AY. 2019-20)
Triton Overseas (P) Ltd. v. UOI [2023] 156 taxmann.com 318 / (2024) 338 CTR 535 (Cal) (HC)

S. 151A : Faceless assessment of income escaping assessment- Reassessment-Notice-Jurisdiction-Scheme-Procedure adopted by Department in contravention of statutorily prescribed procedure-Office Memorandum cannot override mandatory specifications in scheme-Reassessment notice is set aside-Department given liberty to proceed in accordance with amended provisions. [S. 144B, 147, 148, Art. 226] 2173
The Central Government in exercise of powers conferred by section 151A of the Income-tax Act, 1961 by Notification No. S. O. 1466(E), dated March 29, 2022 ([2022] 442 ITR (St.) 198) has introduced the e-Assessment of Income Escaping Assessment Scheme, 2022. Under section 151A, the scheme of faceless assessment is applicable from the stage of show-cause notice under section 148 as well as section 148A. A detailed procedure of faceless assessment has been prescribed under section 144B and section 151A requires for issuance of notice and assessment by Faceless Assessing Officer. Clause 3(b) of the notification clearly provides that the scheme would be applicable to notices under section 148. Even otherwise, it is a settled proposition of law that assessment proceedings commence from the stage of issuance of show-cause notice. It is axiomatic in tax jurisprudence that circulars, instructions and letters issued by the Central Board of Direct Taxes or any other authority cannot override statutory provisions. The circulars are binding upon authorities but courts are not bound by circulars. The mandate of sections 144B and 151A read with the notification dated March 29, 2022 ([2022] 442 ITR (St.) 198) issued thereunder is lucid. There is no ambiguity in the language of statutory provisions and therefore, the office memorandum or any other instruction issued by the Board or any other authority cannot be relied upon. Instructions or circulars can supplement but cannot supplant statutory provisions. For the assessment year 2020-21, the jurisdictional Assessing Officer issued a notice under section 148 to reopen the assessment under section 147 on the ground that there was escapement of income on account of the compensation received by the assessees on acquisition of their agricultural land. On writ petitions contending that the procedure

of faceless assessment prescribed under section 144B and section 151A required for issuance of notices by the Faceless Assessing Officer. Held allowing the petitions, that the object of introduction of faceless assessment would be defeated if the notices under section 148 were issued by the jurisdictional Assessing Officer and therefore the notices were quashed giving liberty to the Department to proceed in accordance with law. (AY. 2020-21)

Jatinder Singh Bhangu v. UOI (2024)466 ITR 474 / 300 Taxman 228/ 339 CTR 473(P&H) (HC)

Jyoti Sareen v. UOI. (2024)466 ITR 474 / 300 Taxman 228/ 339 CTR 473(P&H)(HC)

2174 **S. 151A : Faceless assessment of income escaping assessment –Notice reflecting name of concerned Income tax Authority-Department was to be directed to withdraw impugned notice and issue fresh notice if permissible under law as per scheme read with section 151A [S. 144B, 147,148,148A Art. 226]**

A notice under section 148 was issued upon assessee. In notice, name of Income Tax Officer who was Assessing Officer had been reflected. On writ, it is contended that notices are required to be issued in an automated manner without there being any interface between department and assessee. Notice reflecting name of concerned Income Tax Officer was contrary to provisions of section 151A and schemes framed thereunder, whereby Income Tax Authority was required to undertake these proceedings in a 'faceless' manner. Accordingly, department was to be directed to withdraw impugned notice and issue fresh notice if permissible under law as per scheme read with section 151A. Notification No. 18/2022, dated 29-03-2022.

Ram Narayan Sah v. UOI (2024) 299 Taxman 276/ 340 CTR 505 / 471 ITR 228 (Gauhati) (HC)

2175 **S. 153 : Assessment-Limitation –Remand by Tribunal-Remand on limited issue-Order of Tribunal is affirmed by High Court-SLP of Revenue is dismissed on account of delay [S. 153(3)(ii), Art. 136]**

On appeal by the Department against an order holding the assessment made on the assessee barred by limitation, contending that only the issue relating to disputed purchase having been restored by the Tribunal, and not the entire assessment, the provisions of section 153(3)(ii) of the Income-tax Act, 1961 where no time limit is prescribed would be applicable. High Court dismissed the Department's appeal holding that as the Commissioner (Appeals) as well as the Tribunal had taken note of the factual position and held the assessment to be barred by time, no substantial questions of law arose. SLP of Revenue is dismissed on account of delay. (AY. 1995-96)

PCIT v. CFL Capital Financial Services Ltd. (2024)465 ITR 17 /165 taxmann.com 111 / 300 Taxman 265 (SC)

Editorial : PCIT v. CFL Capital Financial Services Ltd. (2024)465 ITR 15/165 taxmann.com 110 (Cal)(HC)

S. 153: Assessment-Limitation-Failure to pass the order within six months from the date of communication of the Tribunal order-Appellate Tribunal restored the matter to the file of AO with directions to comply with the same within 6 months-Assessment order passed beyond the stipulated timeline provided by the ITAT is barred by limitation. [S. 153(3), 254(1) Art. 226, 265] 2176

Hon'ble High Court held that the AO failed to comply with the directions of the Tribunal to pass a fresh assessment order within 6 months from the date of communication of the Tribunal order. Thus, the fresh assessment order passed by AO beyond the stipulated timelines of 6 months is barred by limitation under section 153(3) of the Act and income as returned by the assessee is to be accepted. Followed *CIT v. Shelly Products (2003) 129 Taxman 271/261 ITR 367(SC)* (AY. 2004-05)

Ramesh Chawla (HUF) v. ITO (2024) 301 Taxman 44 (Delhi)(HC)

S. 153 : Assessment-Reassessment-Limitation –Order was passed on 28th Dec., 2006, the same was communicated to the Authorized Representative of the assessee only on 5th Jan., 2007-Order is without jurisdiction-Order is quashed and set aside. [S. 147, 148, 153(2), Art. 226] 2177

Two notices under s. 148 were served in the month of December, 2005 and March, 2006. Period of limitation for completing the proceeding of reassessment will be nine months starting from 1st April, 2006 and ending on 31st Dec., 2006 as provided under S. 153(2). Even though the assessment order was passed on 28th Dec., 2006, the same was communicated to the Authorized Representative of the assessee only on 5th Jan., 2007. The assessee challenged the said order as time barred. Allowing the petition the Court held that order of any authority cannot be said to be passed unless it is in some way pronounced or published or the party affected has the means of knowing it and that it is not enough if the order is made, signed, and kept in the file, because such order may be liable to change at the hands of the authority who may modify it, or even destroy it, before it is made known, based on subsequent information, thinking or change of opinion. Accordingly, it is held that the proceeding of reassessment of return submitted by the assessee for AY. 2003-04 shall be deemed to be completed only on 5th Jan., 2007 when the assessment order was served/communicated to the representative of the assessee and the same was not completed within the period prescribed under S. 153(2). Accordingly the assessment order is quashed and set aside as time barred. (AY. 2003-04)(SJ)

Mema Paul (Smt.) v. ITO (2024) 339 CTR 448 / 164 taxmann.com 778 (Manipur)(HC)

S. 153 : Assessment-Limitation-Remand by Tribunal-Order received by CIT (Judicial) on 31 st Jan., 2019-Adjustment of refund-Order was passed on 13th Feb., 2023-Order is set aside-Respondents are directed to re-compute the refund payable to the assessee along with statutory interest. [S. 153(3), 237, 240, 244A, 254(1), Art. 226] 2178

Tribunal remanded the matter to the Assessing Officer. CIT(Judicial) had received the order of the Tribunal on 31st Jan., 2019. Order was passed on 13th Feb., 2023 by adjusting the refund. On writ, Court held that the Respondents have failed to address any submission which may compel the Court to doubt the prima facie opinion that came to be recorded on earlier occasion that period of limitation is liable to be computed from the date when the order is received by the concerned statutory authority.

Contention that the period of limitation being liable to be computed as commencing from the date when the SLP was dismissed by the Supreme Court and consequently from 29th Oct., 2020 is not sustainable. Further, the Court also observed that they are unable to either sustain or countenance the claim of the respondents that the order dt. 30th Jan., 2021 of the TPO was either not communicated to them or was not in their knowledge. That stand clearly appears to be wholly incorrect and factually untenable. Even if the benefits of TOLA were extended to the respondents, undisputedly, the order of assessment was liable to be framed lastly by 30th Sept., 2021 whereas the order was passed on 13th Feb., 2023. Accordingly the order is set aside. Adjustment of earlier years refund against perceived demand was not sustainable. Accordingly the Respondents are directed to re-compute the refund payable to the assessee along with statutory interest. (AY. 2011-12)

Readers Digest Book & Home Entertainment (India) (P) LTD. v. DCIT (2024) 339 CTR 99/ 159 taxmann.com 287 (Delhi)(HC)

2179 **S. 153 : Assessment-Reassessment-Limitation-Time barred assessment-Refund-Remand by Tribunal –Assessing Officer is directed to accept the return of income as available on record and pass the consequential orders. [S. 139, 153(2A), 153 (3), 263, Art. 226]**

Assessment has become time-barred after remand by Tribunal. It was not in dispute that as per S. 153(2A) (which is the old provision), the limitation would expire on 31st March, 2018. However, if the amended provision, i. e., s. 153(3) were to be taken into account, the limitation would expire on 31st March, 2017. Thus, whichever regime is taken into account, i. e., the time-limit fixed as per s. 153(2A) or the time-limit fixed by the amended provision ie., s. 153(3) as of today the AO is bereft of jurisdiction and hence, would have no legal locus to pass assessment order-Assessment proceedings concerning asst. yrs. 1998-99 to 2009-10, pursuant to the orders of the Tribunal dt. 21st Nov., 2014 and 29th May, 2015, have become time-barred. On writ the Court directed the AO to accept the return of income as available on record and process and pass consequential orders. Followed, *Nokia India (P) Ltd. v. Dy. CIT (2017) 298 CTR 334 /157 DTR 169 (Delhi) HC), Ancent Technologies (Holding) Ltd. v. ACIT (2023) 334 CTR 84 (225 DTR 270(Delhi) (HC)* (AY. 1998-99 to 2009-10)

Indian Renewable Energy Development Agency Ltd. v. PCIT (2024) 336 CTR 651 / 470 ITR 374 (Delhi) (HC)

2180 **S. 153 : Assessment-Limitation –Remand by Tribunal-Remand on limited issue-Order of Tribunal is affirmed. [S. 153(3)(ii), 260A]**

Held, dismissing the appeal that the Commissioner (Appeals) and the Tribunal had on the facts held that the provisions of section 153(3)(ii) of the Income-tax Act, 1961 were not attracted and that the assessment for the assessment year 1995-96 was barred by limitation. Therefore, the order of the Tribunal need not be interfered with. (AY. 1995-96)

PCIT v. CFL Capital Financial Services Ltd. (2024)465 ITR 15/165 taxmann.com 110 (Cal) (HC)

Editorial : SLP of Revenue is dismissed on account of delay in filing the petition, PCIT v. CFL Capital Financial Services Ltd. (2024)465 ITR 17 /165 taxmann.com 111 (SC)

S. 153 : Assessment-Reassessment-Limitation –Tribunal remanding matter to Transfer Pricing Officer-Limitation for passing final order nine months computed from date of order of Tribunal-No question of second reference being made by Assessing Officer to Transfer Pricing Officer-Tribunal has the power to remand matter to Transfer Pricing Officer. [S. 92CA(1)144C, 254(1),Art. 226] 2181

Held, that the Department's contention is not tenable because while it is true that a direction framed by the Dispute Resolution Panel is in one sense inchoate and remains latent till it comes to be transformed into an actual order of assessment, the writ petition was concerned with a challenge raised on the ground of limitation. The assessee questioned the very jurisdiction of the Assessing Officer to proceed to frame an order of assessment pursuant to any direction that the Dispute Resolution Panel may frame. Hence the High Court could consider the matter under article 226. That from the undisputed facts which obtained under the order of the Tribunal dated July 14, 2017 certain aspects were remanded for the consideration of the Transfer Pricing Officer directly. These were neither questioned nor assailed at any time by the respondents. In fact, the directions as framed were duly acknowledged and accepted, which fact becomes evident from not only the various notices which were issued by the jurisdictional Assessing Officer but also by the action of the Transfer Pricing Officer himself who had proceeded to pass an order on October 17, 2017. It was thus apparent that the principal order of the Tribunal dated July 14, 2017 [1] had come to be duly implemented by the Transfer Pricing Officer on October 17, 2017 itself. Once the Transfer Pricing Officer had proceeded to pass the order of October 17, 2017, all that the Assessing Officer was obliged to do was pass an assessment order in accordance with the procedure prescribed in section 92CA(4) of the Act. That the Tribunal, while remanding certain items for reconsideration to the Assessing Officer, had remitted the issues pertaining to arm's length price directly to the Transfer Pricing Officer. This was based on the consent of parties. Even the aspect of corporate guarantee was remanded directly to the Transfer Pricing Officer subject to the rider that it would be taken up for consideration after the Special Bench had rendered its decision. Thus the original order of assessment dated February 21, 2014 and in terms of the order of the Tribunal, a fresh order of assessment was liable to be drawn before the expiry of nine months from the end of the relevant financial year. Admittedly this period of nine months when reckoned from July 14, 2017 undoubtedly came to an end on December 31, 2018. Once that terminal point was reached, the respondent clearly stood deprived of jurisdiction or authority to pass an order of assessment pursuant to the directions of the Tribunal. The Transfer Pricing Officer had acted in terms of the directions as framed by the Tribunal, already passed a consequential order on October 17, 2017. All that was required of the respondents thereafter was for the Assessing Officer to frame an order of assessment in accordance therewith. The second reference which was framed by the Assessing Officer and was dated December 27, 2018, was clearly unwarranted and in any case could not be viewed as conferring a fresh lease of life to the power to assess. The Assessing Officer was barred in law from passing any further orders of final assessment pertaining to the assessment year 2009-10. (AY. 2009-10)

New Delhi Television Ltd. v. DRP (2024)465 ITR 687/162 taxmann.com 692 (Delhi)(HC)

2182 **S. 153 : Assessment-Reassessment-Limitation –Order to give effect to direction by Tribunal-Finance Act, 2016-Directions issued by Tribunal on 31-3-2017-Notices on 5-11-2020 and 6-11-2020-Barred by limitation. [S. 14A, 143, 144, 147,153(6), 153(7), 153(9),254(1), Art. 226]**

The Tribunal by its common order dated March 31, 2015 had granted certain relief to the assessee against disallowance of bad debts and advances written off and under section 14A of the Act essentially because of its order on these very aspects in the assessee's appeal against the authorities' orders for the assessment year 2006-07. The Tribunal in its order in the proceedings for the assessment year 2006-07, both on the question of disallowance of bad debts and advances written off and under section 14A of the Act, has concluded that the Assessing Officer, in the factual matrix and in the interest of justice and equity, must re-examine all the relevant facts "to ensure clarity" in the adjudication, and the Tribunal has restored these aspects to the Assessing Officer for reconsideration. The Tribunal had directed the Assessing Officer to consider the question of disallowance for bad debts and advances being written off and under section 14A of the Act permitting the assessee to produce further documents, and directing the Assessing Officer to extend an opportunity of hearing to the assessee and decide afresh in the light of judicial pronouncements. This order was common to all three assessment years, and in fact, it was in view of the Tribunal's similar order for the previous assessment years. Hence it was indubitable that the Tribunal's common order dated March 31, 2015 did not set aside or cancel the assessment orders requiring a fresh assessment. On writ the Court held that the notices dated November 5, 2020 and November 6, 2020 were liable to be quashed on the ground that they were issued after March 31, 2017 which would be impermissible because of the provisions of section 153(7) of the Act as amended by the Finance Act 2016. Explanatory Notes issued by Circular No. 3 of 2017, dated January 20, 2017 ([2017] 391 ITR (St.) 253). (AY. 2007-08, 2009-10)

United Spirits Ltd v. ACIT 2024] 464 ITR 167 (Karn)(HC)

2183 **S. 153 : Assessment-Limitation-Tribunal order-Partial remand-Limitation would commence from the date when the Assessing Officer becomes aware of the order of the Tribunal-Order is barred by limitation-Order of Tribunal is affirmed. [S. 153(2A), 254]**

Tribunal vide order dated 20-2-2015, deleted additions made by Assessing Officer and partially remanded matter to file of Assessing Officer to consider related issues afresh. Assessing Officer on 27-12-2016 drew up a draft assessment order and a final assessment order came to be framed on 31-10-2017. On appeal, Tribunal held that since Assessing Officer had full knowledge of order of Tribunal and pursuant to such knowledge, he framed appeal effect order dated 12-3-2015, remaining effect should also have been given on or before 31-3-2016 and, thus, draft order and final assessment order were barred by limitation. High Court affirmed the order of the Tribunal. Followed, *CIT v. Odeon Builders (P.) Ltd. [2017] 247 Taxman 184/393 ITR 27 (Delhi)(HC)(FB)* wherein the Court held that while examining the issue of limitation, one would have to pose the question of when the department became aware of the order and not when the concerned Commissioner or Principal Commissioner may have been served or had derived knowledge. It proceeded further to observe that once a responsible officer of

the department becomes aware of the order, the period of limitation would commence form that point in time.
In *GE Energy Parts Inc. v. Dy. CIT [2019] 111 taxmann.com 56 (Delhi) (HC)* it is held that what is relevant is when the Commissioner representing the department before the Tribunal received the order, which in any event is generally made available in the public domain soon after the order is pronounced. (AY. 2005-06 to 2006-07)
CIT (IT) v. Qualcomm Incorporated (2024) 298 Taxman 298 /470 ITR 598 (Delhi)(HC)

S. 153 : Assessment-Reassessment-Limitation-Order giving effect to the order of the Tribunal-Expression 'received'-Once a responsible officer of department becomes aware of order, period of limitation would commence from that point in time-Department is directed to remove demands and penalty reflected in ITBA portal and to refund amount lying with Department along with interest [S. 254(1), Art. 226] 2184
The Tribunal on 8-10-2018 remanded the matter to the Assessing Officer for the purpose of fresh assessment and the Tribunal had also deleted the demand reflected on the Income Tax Business Application (ITBA) portal. During the interregnum, the Dy. Commissioner had passed a penalty order under section 271(1)(c) on 27-3-2015 and the appeal against the said penalty order was also dismissed by the Commissioner (Appeals). Thereafter, the assessee made several representations to the respondents praying for rectification of the error with respect to the demand being reflected on the ITBA portal and the issue of refund, all to no avail. Since no reply was received by the assessee upon its representations, the assessee filed a Right to Information (RTI) application which revealed that the Tribunal's order had been forwarded to the Commissioner (Judicial) on 24-10-2018. The assessee filed the petition and contended that despite the order passed by the Tribunal being communicated to the concerned authority of the Income Tax Department (Department) within the stipulated time, the respondents have failed to pass a fresh assessment order. Allowing the petition, Court held that once a responsible officer of department becomes aware of order, period of limitation would commence from that point in time. Since Department had failed to comply with order of Tribunal in passing a fresh assessment order within stipulated time i. e. within 12 months from 24-10-2018, Department is directed to remove demands and penalty reflected in ITBA portal and to refund amount lying with Department along with interest. Expression 'received' as occurring in section 153(3) of the Income-tax Act, 1961. (AY. 2008-09)
Sunshine Capital Ltd. v. Dy. CIT (2024) 299 Taxman 192 /338 CTR 898 /(2025)472 ITR 293 (Delhi)(HC)

S. 153 : Assessment-Reassessment-Limitation –Tribunal-Power-Limitation-Where Appellate Authority remands case for a determination on a selected issue or aspect of assessment, parties are fully aware of parameters within which fresh enquiry is circumscribed and limited-Rigours of limitation are totally removed-Tribunal had directed Assessing Officer to consider question of disallowance for bad debts/advances being written off-Tribunal's order did not set aside or cancel subject assessment orders requiring a fresh assessment. [S. 153(2A), 153(6) 153(7) 253, 254(1)] 2185
On writ, the court held that proceedings pending as of 1-6-2016, aimed at giving effect to orders under section 153(5) or implementing findings/directions under section 153(6),

must be concluded by 31-3-2017 or within twelve months from end of month in which such orders were received, whichever is later. In view of above clarification it could not be said that proceedings pending to give effect to orders or findings/directions as of 31-3-2017, were saved under provisions of section 153. Circular 3/2017, dated 20-1-2017.. CIT v. Shelly Products (2003) 129 Taxman 171/ 261 ITR 367 (SC) (AY. 2007-08 to 2009-10)
United Spirits Ltd. v. ACIT (2024) 296 Taxman 141/ 464 ITR 167/ 337 CTR 826 (Karn)(HC)

2186 **S. 153 : Assessment-Reassessment-Limitation –Non-resident-The assessment was made as per the procedure laid down in S. 144C-No reference was made under S. 92CA(1)-Time-limit for completing the assessment under S. 147 was available upto 31st March, 2022-The final assessment order passed by the AO under s. 144 r/w s. 144C, dt. 12th Jan., 2023-Barred by limitation. [S. 92CA, 144, 144C,147, 148 153(2)]**
Held that the notice under S. 148 was issued to the assessee on 30th March, 2021 and no reference was made under S. 92CA(1), The time-limit for completing the assessment under s. 147 was available up to 31st March, 2022 as per ss. 153(2) and 153(4) being not applicable, the final assessment order passed by the AO under s. 144 r/w s. 144C, dt. 12th Jan., 2023 is barred by limitation. (AY. 2017-18)
Syed Gulam Mohiuddin v. ITO (IT) (2024) 230 TTJ 956 / 38 NYPTTJ 716/ 163 taxmann.com 234 (Hyd)(Trib)

2187 **S. 153 : Assessment-Limitation-Date of order-Despatch-Body of the assessment order, the date of passing of the order has been mentioned as 28th Dec., 2016-Assessment order was dispatched only on 2nd Jan., 2017 as per the postal track consignment-Assessment order is time barred. [S. 143(3)]**
Held that though in the body of the assessment order, the date of passing of the order has been mentioned as 28th Dec., 2016, the assessment order was dispatched only on 2nd Jan., 2017 i. e., after the expiry of limitation on 31st Dec., 2016 and, therefore, the assessment is time-barred and accordingly, the assessment order is set aside. Followed, *Pa Sharma v. Dy. CIT (ITA Nos. 3556 & 3557/Dei/2017, dt 8th Feb, 2019.* (AY. 2013-14)
Instrumentation Laboratory India (P) Ltd. v. Dy. CIT (2024) 229 TTJ117 (UO) (Delhi)(Trib)

2188 **S. 153A: Assessment-Search –Assessment prior to search-Order of High Court is affirmed-SLP of Revenue is dismissed. [Art. 136]**
High Court held that where assessment of assessee had attained finality prior to date of search and no incriminating documents or materials had been found and seized at time of search, no addition could be made under section 153A as case of assessee was of non-abated assessment. The Hon'ble Supreme Court, keeping in view, its decision of *Pr. CIT v. Abhisar Buildwell (P.) Ltd. [2023] 149 taxmann.com 399/293* held that no case for interference is made out. Hence, SLP was dismissed. (AY. 2010-11, 2011-12)
PCIT (Central) 2 v. Jay Ambey Aromatics (2023) 156 taxmann.com 691 / (2024) 296 Taxman 475 (SC)
Editorial: Refer CIT v. Jay Ambey Aromatics [2023] 155 taxmann.com 668 (Delhi). (HC)

S. 153A: Assessment-Search-Cash credits-Incriminating document-Document of shareholding pattern, document prepared by way of secretarial compliance report, which was filed along with company's annual return in Form MGT-7 with ROC-Available in public domain-Would not constitute incriminating document to justify reopening of assessment of unabated/completed-No substantial question of law. [S. 132, 260A] 2189

Dismissing the appeal of the Revenue, the Court held that shareholding pattern document prepared by way of secretarial compliance report, which was filed along with company's annual return in Form MGT-7 with ROC and was therefore available in public domain. GCL-HD-1, collected by jurisdictional authority during search carried out in premises of assessee in year 2017 did not constitute incriminating material so as to justify reopening of assessment of unabated/completed assessments under section 153A, thus, addition to income of assessee under section 68 of the Act is rightly deleted by the Tribunal. No substantial question of law. (AY. 2011-12 to 2015-16, 2017-18)

CIT v. Goldstone Cements Ltd. (2024) 470 ITR 749 /156 taxmann.com 529 (Gauhati) (HC)

S. 153A: Assessment-Search-Long term capital gains-No incriminating material is found during search-Order of Tribunal deleting the addition is affirmed. [S. 58,68, 69C, 260A] 2190

Held that since no incriminating evidence was found during search, order passed under section 153A making additions under section 68 and section 69C is without jurisdiction. Order of Tribunal is affirmed. (AY. 2012-13)

PCIT v. Shardaben Arvindbhai Patel (2024)470 ITR 332/ 152 taxmann.com 535 (Guj) (HC)

S. 153A: Assessment-Search-No incriminating materials were found-Addition cannot be in respect of completed or Unabated assessment. [s. 55, 68 69C 132] 2191

Dismissing the appeal of the Revenue, Court held that in absence of incriminating materials found during search, addition cannot be made in respect of completed or Unabated assessment. Order of Tribunal is affirmed. (AY. 2012 13)

PCIT v. Shardaben Arvindbhai Patel (2024) 470 ITR 332 (Guj) (HC)

S. 153A: Assessment-Search-Reassessment-Completed or unabated assessments-Limitation-Liberty given to Revenue cannot be construed to have given liberty to Revenue from obligation to establish that reassessment proceedings are otherwise in accordance with law-Reassessment notice under section 148 and the consequential proceedings under section 147 were quashed. [S. 132, 147, 148, 149(1), 150, 153C, Art. 226] 2192

Held that in *PCIT v. Abhisar Buildwell P. Ltd (2023) 454 ITR 212 (SC)* the liberty which the Supreme Court accorded and the limited right inhering in the Revenue to initiate reassessment proceedings under section 147 was subject to that power being otherwise compliant with the Chapter pertaining to reassessment as contained in the Act. The observations of the Supreme Court could not be read or construed as a carte blanche enabling the Revenue to overcome and override the restrictions stipulated in section 149. The observations of the Supreme Court intended to merely convey that the annulment of the search assessments would not deprive or denude the Revenue of its power to reassess and which independently existed. The Supreme Court being mindful of the statutory prescriptions, which otherwise imbued the commencement of reassessment, qualified that observation by providing that such an action would have to be in accordance with

law. This note of caution appeared at various places in that judgment and was apparent from the observation that the power to reassess would be subject to the fulfilment of the conditions mentioned in sections 147 and 148. While according liberty to the Revenue to initiate reassessment, the Supreme Court pertinently observed that it would be subject to the proposed action being in accordance with law and if "permissible in law". Therefore, neither of these decisions could be read as enabling the Revenue to overcome the statutory bar of limitation. Those judgments could not be construed to be giving liberty to the Revenue from the obligation of independently establishing that the proposed action for reassessment under section 147 would otherwise be in accordance with law. That the expression "finding" as occurring in section 150 should be understood to be a conclusion or a decision of an authority or Tribunal rendered in the context of a particular case and essential for determining the grant of relief. A "direction", would constitute one which an authority was empowered to issue under the Act. Tested on those precepts, the observations in PR. CIT v. Abhisar Buildwell P. Ltd(20223) 454 ITR 212 (SC) as amounting to a finding since the principal question in those appeals was with respect to the validity of the search assessments which were undertaken could not be countenanced. The Supreme Court had, in order to balance equities, had additionally observed that it would be open for the Revenue to commence reassessment, if otherwise permissible in law and such observation could not be viewed as amounting to a direction which would enable the Revenue to overcome the prescription of limitation which otherwise applied. Accordingly the reassessment notice under section 148 and the consequential proceedings under section 147 were quashed. (AY. 2007-08 to 2012-13)
ARN Infrastructures India Ltd. v. ACIT. (2024)469 ITR 333/ 167 taxmann.com 38 (Delhi)(HC)

2193 **S. 153A : Assessment-Search or requisition-Search had been conducted on 13-10-2010 and assessments in question were for year 2005-06 to 2007-08 which had been unabated/concluded as on date of search-Assessing Officer is precluded from making any addition to return of income, in absence of incriminating material found as a result of search-The completed/unabated assessments can be reopened by the Assessing Officer in exercise of powers under section 147/148 subject to fulfilment of conditions as envisaged under the said provisions and as may be permissible in law. [S. 132,132A 147, 148, 260A]**

A search was conducted on 13-10-2010 and the assessments in question were for the year 2005-06 to 2007-08 which had been unabated/concluded as on the date of the search. The Assessing Officer made addition to the return of income. On appeal, the Tribunal held that the Assessing Officer was precluded from making any addition to the return of income, in the absence of incriminating material found as a result of search for unabated/concluded assessments. On appeal High Court affirmed the order of the Tribunal. High Court also clarified that the completed/unabated assessments can be reopened by the Assessing Officer in exercise of powers under section 147/148 subject to fulfilment of conditions as envisaged under the said provisions and as may be permissible in law. Relied on *CIT v. Continental Warehousing Corporation (Nhava Sheva) Ltd. [2015] 232 Taxman 270/374 ITR 645 (Bom)(HC), Pr. CIT (Central) v. Abhisar Buildwell (P.) Ltd. [2023]293 Taxman 141/454 ITR 212 (SC)* (AY. 2005-06 to 2007-08)
PCIT v. Welspun India Ltd. (2024) 301 Taxman 575 (Bom.) (HC)

S. 153A: Assessment-Search or requisition–Block period of six years–No incriminating material for the relevant assessment year-Order of CIT (A) deleting the addition is affirmed-Order of Tribunal is set aside. [S. 132,260A] 2194

The assessee is engaged in business of gold ornaments. Search conducted under section 132 at various business premises of assessee, yielded only such incriminating material as would have a bearing on income of assessee for assessment year 2008-09 as all such seized material was in relation to transactions that were current in said year. However, the Assessing Officer issued notices under section 153A to assessee and used incriminating material to reject books of account of assessee for all assessment years and proceeded to estimate alleged escaped income for all aforementioned assessment years based on estimation done for said year and declared income of all assessment years was enhanced accordingly. The Commissioner (Appeals) allowed appeal preferred by assessee for assessment years 2002-03 to 2007-08 but confirmed demand for differential tax for assessment year 2008-09. The Tribunal allowed the appeal preferred by the department. On appeal the Court held that it is not permissible and proper for the Assessing Officer to have re-opened the assessment pertaining to the assessee for the assessment years 2002-03 to 2007-08 under Section 153A under circumstances where the search conducted under Section 132 did not yield any incriminating material pertaining to the assessee for the said assessment years. Appeal of the assessee is allowed. Followed *Pr. CIT, Central-3 v. Abhisar Buildwell Pvt. Ltd. [2023] 149 taxmann.com 399/293 Taxman 141/ 454 ITR 212 (SC)*. (AY. 2002-03 to 2008-09)

Sunny Jacob Jewellers v. CIT (2024) 300 Taxman 10/ (2025) 473 ITR 159 (Ker.)(HC)

S. 153A: Assessment-Search or requisition–No incriminating material-Deemed dividend-Deletion of addition is affirmed-No substantial question of law. [S. 2(22)(e), 132, 260A] 2195

Dismissing the appeal of the Revenue, the Court held that Assessing Officer would not be justified to assess income under section 153A in case no material was found during search and in instant case no incriminating material, based on which assessment orders were passed, was placed before Court, order of Tribunal deleting addition is affirmed. (AY. 2009-10, 2011-12)

PCIT, Central v. M. Kiran Kumar (2024) 300 Taxman 563 (Mad.) (HC)

S. 153A: Assessment-Search-Reassessment-Provisions of S. 153A to S. 153D have prevalence over the regular provisions for assessment or reassessment under S. 143, 147 and 148-S. 148 shall continue to apply to the regular proceedings and also in cases where no incriminating material is seized during the search or requisition-Argument that S. 153C can be invoked in case there is incriminating material for all the relevant preceding years and otherwise S. 148 is to be resorted to, is misplaced-Once there is incriminating material seized or requisitioned belonging or relatable to the person other than on whom search was conducted S. 153C is to be resorted to-Notice under s. 148 is therefore liable to be quashed. [S. 143, 147, 148, 153A, 153C, 153D, Art. 226] 2196

Allowing the petition the Court held that in cases of the person other than on whom search was conducted but material belonging or relating such person was seized or requisition, the AO has to proceed under s. 153C. The two pre-requisites are that the

AO dealing with the assessee on whom search was conducted or requisition made, being satisfied that seized material belongs or relates to another assessee shall hand over it to AO having jurisdiction of such assessee. Thereafter, the satisfaction of AO receiving the seized material that the material handed over has a bearing for determination of total income of such other person for the relevant preceding years. On fulfilment of twin conditions, the AO shall proceed in accordance with the provisions of S. 153A. Provisions of section 153A to 153D have prevalence over the regular provisions for assessment or reassessment under section 143 and 147/ 148. Once there is incriminating material seized or requisitioned belonging or relatable to the person other than on whom search was conducted, S. 153C is to be resorted to, notices issued under section 148 and orders are quashed. (AY. 2014-15)

Shyam Sunder Khandelwal v. ACIT (2024) 338 CTR 129 / 161 taxmann.com 255/ 471 ITR 45 (Raj.) (HC)

2197 **S. 153A: Assessment-Search-Electronic device in the form of a hard drive extracted from the computer of the assessee-Reappreciation of evidence-No substantial question of law. [S. 68, 132, 260A]**

The Tribunal elaborated upon the contents of the so-called incriminating material, Le. GCL-HD-1 and recorded its conclusions while concurring with the findings of the CIT(A), which had concluded that this document was not an incriminating material and simply contained a shareholding pattern of the assessee which was duly verifiable from the books of accounts and other secretarial records tiled by the assessee with ROC prior to the date of search. The issue whether a document, which in these cases is the electronic device in the form of a hard drive extracted from the computer of the assessee during search constitutes incriminating material or not, would unquestionably require evaluation, assessment and appreciation of contents of such document which is an exercise of evaluation of evidentiary worth of the document. Thus, this Court has no doubt in its mind that the conclusions recorded on the nature of contents of the document by the competent forum, be it the CIT(A) or the Tribunal as to whether the same was incriminating or not, would definitely be findings of fact and hence, the proposed substantial question of law in all these appeals, which is the primary ground for assailing the judgment passed by the Tribunal and seeking admission of the appeals, cannot be considered to be a substantial question of law. (AY. 2011-12 to 2015-16, 2017-18)

CIT v. Goldstone Cements Ltd. (2024) 336 CTR 448 (Gauhati) (HC)

2198 **S. 153A: Assessment-Search-Finding of Tribunal that premises searched were not of assessee-Assessment proceedings is invalid-No substantial question of law. [S. 260A]**

Held that the premises that were searched, were not of the assessee, that there was nothing on record to connect the assessee with the premises searched, and that qua the assessee, the proceedings under section 153A were invalid, on appeal by the Department. Order of Tribunal is affirmed. No substantial question of law. (AY. 2002-03 to 2004-05)

CIT v. Sarvmangalam Builders and Developers Pvt. Ltd. (2024)465 ITR 629 (Delhi) (HC)

S. 153A: Assessment-Search or requisition-Warrant of Authorisation-Panchnama-No search against the assessee-Panchanama reflected the name of the assessee-Panchnama cannot be treated as warrant of authorisation-Assessment order is quashed as without jurisdiction-Existence of alternative remedy-Not bar to entertainment of writ petition where challenge is to jurisdiction exercised by Authority and interpretation of statutory provisions involved. [S. 132,153D, Art. 226] 2199

Assessee owned land and entered into separate development agreements with five companies to raise security deposit towards development of land. A search was conducted at premises of assessee and final assessment order was passed under section 153A. Thereafter, a search and seizure operation was conducted at premises of one M3M India Ltd, pursuant to said search, a panchnama was drawn and assessee-company's name was added in it. Consequently, a notice under section 153A was issued against assessee on ground that five companies, which had entered into development agreement with assessee, had subsequently entered into separate agreements with ten other companies and had received substantial amount. Assessing Officer assessed the amount as undisclosed income in hands of assessee and passed order under section 153A read with section 153D. The assessee filed the writ petition and contended that when there was no search conducted under sections 132 and 132A as against assessee and only a panchnama reflected name of assessee which was prepared at registered office of M3M India Ltd. action of Assessing Officer in passing second assessment order based on notice under section 153A without conducting search and seizure operation was unjustified and was to be quashed. Panchnama would be a document which had to be prepared recording articles, material and objects which may be seized as incriminating documents at time of conducting search of premises, thus mentioning name of any company in panchnama would only reflect that documents relating to that company were found during search at premises and could not be treated to mean authorization issued to authorities under section 132. High Court quashed the assessment order. (AY. 2011-12)

Misty Meadows (P.) Ltd. v. UOI (2024) 299 Taxman 392 / 465 ITR 630/338 CTR 876 (P&H) (HC)

S. 153A: Assessment-Search-No assessment was pending on the date of search-No incriminating material was found during the search-Fresh material/information received after the date of search would not be sufficient to reopen the assessment under section 153A. [S. 80IAB, 132, 143(1), 143(2), 260A] 2200

A search and seizure operation was conducted at the premises of assessee. Consequently, a notice under section 153A was issued to assessee. In response, assessee requested to treat original return as return filed in response to notice. Assessing Officer disallowed deduction claimed under section 80IAB and added back same to income declared in return. Assessee claimed that no incriminating material was found during search and proceedings under section 153A were bad in law. It was noted that subsequent to search, a statement was recorded of valuer which formed basis for disallowance of deduction claimed under section 80-IAB. CIT(A) deleted the addition. Tribunal held, that since no assessment was pending on the date of the search and no incriminating material was found during the search, fresh material/information received after the date

of the search would not be sufficient to reopen the assessment under section 153A. On appeal the High Court held that where no assessment proceedings are pending on the date of initiation of search, the Assessing Officer may consider only the incriminating material found during the search and is precluded from considering any other material derived from any other source. Appeal of Revenue is dismissed. (AY. 2011-12)
PCIT, Central-1 v. Oxygen Business Park (P.) Ltd [2024] 463 ITR 125 (Delhi) (HC)

2201 **S. 153A: Assessment-Search-Limitation-Direction is issued to refund the entire seized cash with interest-Reassessment notice is quashed. [S. 132A, 132B (4), 147, 148, 153B, Art. 226]**
Held, that there was no dispute as to the first and last requisitions having been made on June 6, 2017 in the assessment year 2018-19, corresponding to the financial year 2017-18, and the last date of the relevant assessment year in which the requisition was made would be March 31, 2018 and the period of limitation would expire on December 31, 2020. No assessment was initiated on or before that date under section 153A. The assessments were initiated that too under section 148 for the assessment years 2013-14 to 2018-19 on March 31, 2021, long after the assessment period had expired. Hence, a direction would issue to the Department to refund the entire seized cash with interest, as provided under section 132B(4). (AY. 2013-14 to 2018-19)
Amit Kumar Alias Amit Sarraf v. UOI (2024)462 ITR 205 / (2025) 342 ITR 308 (Pat.) (HC)

2202 **S. 153A: Assessment-Search-Elections notified-Applicable only where seized assets or requisitioned are in any manner connected with ongoing Assembly or Parliamentary Election-Seizure of cash by Tamil Nadu State Surveillance team after Tamil Nadu State Assembly Election model code of conduct was in force-Exception is not applicable-Assessee and its president are not excluded from purview of proceedings reassessment. [S. 131(IA), 147, 148, 153C, ITR, 112F, Art. 226]**
After the Tamil Nadu State Assembly Election Model Code of Conduct was in force, the Tamil Nadu State Surveillance Team intercepted two persons R. Unnikrishnan a bank manager, and M. Swaminathan, who were found carrying in cash in a vehicle, and seized the cash. The statement of R. Unnikrishnan was recorded under section 131(1A) of the Income-tax Act, 1961. A statement was also obtained from the assessee's chairman, who stated that a consolidated cheque was drawn to disburse the salary of 25 different staff members. Subsequently, 25 self-cheques were drawn and the amount withdrawn was to be handed over at his house, as he was unable to go to the bank himself. After the orders rejecting the applications filed under rule 112F of the Income-tax Rules, 1962 were rejected and an assessment order was passed, R. Unnikrishnan retracted his earlier statement. On writ petitions contending that the exception provided in the provisions of rule 112F were attracted and therefore, invocation of the provisions of sections 153A and 153C was without jurisdiction, that the Assessing Officer should not have made assessment section 143(3) read with 153(1)(b). On writ, dismissing the petitions, that merely because the search was conducted or requisition was made when the Tamil Nadu State Assembly Model Code of Conduct from the State Assembly election in Tamil Nadu was in force, that could not mean that the issuance of notice under section 153A or section 153C would be automatically excluded and

the exception under rule 112F(ii) applied. The seizure of cash from the possession of R. Unnikrishnan the bank manager and S, merely coincided with the implementation of the Tamil Nadu State Assembly Model Code of Conduct. The exception under rule 112F(ii) of the Income-tax Rules, 1962 would apply only where the assets seized or requisitioned were in any manner connected with the ongoing election in an assembly or Parliamentary constituency. On the facts this exception was not applicable to the assessee since the statements of R. Unnikrishnan and M. Swaminathan, they made it clear that it was the practice of the assessee as the president of the trust to credit the salary of the employees into their personal savings account and thereafter withdraw it by collecting self-drawn cheques duly signed by them. The statement that was given by the assessee was retracted only at a later point of time. Unless, the cash seized was in connection with the assembly election, the question of excluding the assessee and its president from the purview of proceedings under sections 147, 153A or 153C could not be countenanced. (AY. 2021-22) (SJ)

St. Antony Educational and Social Society v. CBDT (2024) 462 ITR 290/336 CTR 195 (Mad.) (HC)

D. Prakashmull Chordia v. CBDT (2024)462 ITR 290/ 336 CTR 195 (Mad.) (HC)

S. 153A: Assessment-Search-No incriminating material-Completed/unabated assessments-Order of Tribunal deleting the addition is affirmed. [S. 132, 132A, 147, 148] 2203

In respect of completed/unabated assessments, no addition can be made by the AO in the absence of any incriminating material found during the course of a search under section 132 or requisition under section 132A of the Act, 1961. However, the completed/ unabated assessments can be re-opened by the AO in the exercise of powers under sections 147/148 of the Act, subject to fulfilment of the conditions therein. Followed *CIT (Pr) v. Abhisar Buildwell P. Ltd (2023) 454 ITR 212 (SC)* (AY. 2011-12)

PCIT v. Shyama Power India Ltd. [2024] 461 ITR 350 (Gauhati) (HC)

S. 153A: Assessment-Search-Information from Investigation Wing-Foreign Bank-The assessee has accepted the relevant documents as genuine-Not necessary to follow the procedure laid down in S. 65B of Indian Evidence Act, 1872-Admissible as evidence-Deposits in HSBC London-Income from other sources-Art. 23(3) of Indo-UK DTAA is not automatically applicable-DTAA-India-UK-Bank account showed closed status-Notional interest income cannot be estimated. [S. 90, Indian Evidence Act, 1872, S. 65B, Art. 23(3)] 2204

Held that the assessee has not retracted the statement and proceeded to revise the return of income and paid the relevant tax. Therefore, the search was initiated to verify the information available with the Revenue through the FT&TR division of the CBDT and the same was found to be proper when confronted with the assessee. Therefore, the information collected was confirmed in the search assessment proceedings is nothing but acceptance and confirmation of the existence of such bank account. That the assessee not only revised the return of income and chose not to retract the statement. Therefore, now invoking the jurisdictional issue relying on the several case laws is not acceptable at this stage. This goes to prove that the information with the Revenue

is substantially correct. The material with the Revenue has to be considered proper and the action of the AO to accept the revised return of income and to complete the assessment goes to prove that the material with the Revenue can be assessable under s. 153A. Tribunal also held that deposits in HSBC London which is admitted by assessee is assessable as income from other sources. The benefit of Art. 23(3) of Indo-UK DTAA is not automatically applicable. Bank account obtained by the assessee with HSBC abroad showed closed status hence, notional interest income cannot be estimated. (AY. 2006-07 to 2012-13)
Rajinder Kumar v. ACIT (2024) 232 TTJ 261 / 243 DTR 297 / 38 NYPTTJ 776 (Delhi) (Trib)

2205 **S. 153A: Assessment-Search-Authorisation in the name of assessee-Search conducted at the premises of Directors-Proceedings are invalid. [S. 132, 133A(3)(ia)]**
Tribunal held that when the search authorisation is in the name of the assessee but carried out on the premises of the Directors, proceedings concluded under the provisions of section 153A are invalid. (AY. 2017-18, 2018-19) (ITA Nos. 182, 183 /Bang / 2023 dt 7-8 2024)
DCIT v. BlueLine Foods (India)Pvt Ltd (2024) Chamber's Journal-September-P. 112 (TM) (Bang.) (Trib)

2206 **S. 153A: Assessment-Search-Unabated assessment year-No incriminating material-Addition cannot be made merely on the basis of statement recorded during search. [S. 132, 132(4)]**
Held that absence of incriminating material for an unabated assessment year, addition cannot be made merely on the basis of a statement recorded during the search. (AY. 2010-11) (ITA No. 1342 /Pun/ 2023 dt 13-8 2024)
DCIT v. Marsh Fincom Pvt. Ltd. (2024) Chamber's Journal-September-P. 114 (Pune) (Trib)

2207 **S. 153A: Assessment-Search-Dumb document–Quotations-Loose papers-Addition is deleted. [S. 69C]**
Held that the AO has not conducted any independent enquiry with the customs authorities, shipping agents, suppliers, etc. Further, the AO did not bring any corroborative materials and also did not conduct any independent enquiry to prove the genuineness of these documents and to disprove the explanations of the assessee. In view of the foregoing discussions, these documents, being loose papers, should be classified as dumb documents only and the AO could not have placed reliance on these documents in order to make the impugned additions. The documents found in the phone of the partner of the assessee-firm cannot be considered to be credible evidence which would support the additions made by the AO in both the years, they can be considered to be dumb documents only, since they were not corroborated by any other independent documents or enquiry. Accordingly, the additions made by the AO in both the years are deleted. (AY. 2020-21, 2021-22)
Raj Technology v. Dy. CIT (2024) 232 TTJ 945 / 38 NYPTTJ 1350 (Mum.) (Trib)

S. 153A: Assessment-Search-Bank Locker in the name of assessee's father-Search warrant in the name of assessee-Keys of the locker were found from the residential premises of the assessee-Issue of notice is valid-long term capital gains on sale of equity shares-Addition is deleted. [S. 68, 69C, 132] 2208

Held that though the search warrant was issued in the name of the assessee for opening the bank locker which was in the name of his father, keys of which were recovered from the residential premises of the assessee, issue of notice under s. 153A to the assessee is valid. The assessee has submitted the source of fund utilised for investment in shares. The AO is not justified in making addition under section 68/69C of the Act. Addition is deleted. (AY. 2014-15)

Rajesh Omprakash Agrawal v. DCIT (2024) 229 TTJ 705 / 238 DTR 142 (Mum.) (Trib)

S. 153A: Assessment-Search-Unabated assessment-No incriminating material-Information from audited balance sheet-Addition is deleted. [S. 132] 2209

Held that addition cannot be made merely on the basis of information available in the audited balance sheet relating to unsecured loans without making reference to any incriminating material. Such an addition is not sustainable in the case of unabated assessments. (AY. 2014-15, 2015-16)

DCIT v. Bengal Brahmaputra Realty Ltd. (2024) 229 TTJ 41 (UO) (Gauhati) (Trib)

S. 153A: Assessment-Search-Wrongly initiated-Illegal search-Nexus is not established-Assessment is held to be bad in law. [S. 132] 2210

Held that there was lack of information against the assessee prior to the action of search, exhibiting gross non-application of mind and arbitrariness by the appropriate authorities. Reason to believe was non-existent prior to the search. Even after the search, nexus with ACCSL was not established. Entire search under S. 132 is on a wrong person which was conducted on namesake of the assessee. As the search is illegal, assessment and demand is quashed. Referred *Sanjay Singal v. UOI (2022) 325 CTR 354 (Raj)(HC)* (AY. 2017-18 to 2019-20)

DCIT v. Sanjay Singhal (2023) 37 NYPTTJ 1688 (2024) 228 TTJ 241 / 235 DTR 73 (Jodhpur)(Trib)

Rajkumari Singal v. Dy. CIT (2023) 37 NYPTTJ 1688 (2024) 228 TTJ 241 / 235 DTR 73 (Jodhpur)(Trib)

S. 153A: Assessment-Search-Undisclosed income-Excess stock of jewellery found during search-Average cost price for valuation of stock-Difference in valuation of stock is deleted-Additional income disclosed cannot be assessed at 60% as per provision of S. 115BBE of the Act. [S. 115BBE, 132,] 2211

Held that method of valuation adopted by the assessee has been accepted regularly by the Revenue. Accordingly, applying the average gross profit rate of 11. 34 per cent is rejected. Tribunal also held, that the assessee cannot be forced to pay tax on undisclosed income which has been computed incorrectly although, the assessee might have made a surrender at the time of search. Therefore, addition on account of difference in the valuation of stock is sustainable only to the extent admitted by the assessee. The Tribunal also held that additional income disclosed cannot be assessed at 60% as per provision of S. 115BBE of the Act. (AY. 2017-18)

Sham Fashion Mall v. DCIT (2024) 228 TTJ 576 (Chd.) (Trib)

Sham Jewellers v. DCIT (2024) 228 TTJ 576 (Chd) (Trib)

2212 **S. 153A: Assessment-Search-Admitted as undisclosed income-Not Retracted-Order of CIT(A) deleting the addition is set aside. [S. 68]**
The AO assessed the income which was admitted, offered and included by the assessee in its return of income. CIT(A) deleted the addition. On appeal by Revenue, the Tribunal held, that the order of CIT(A) deleting the addition is not justified. Appeal of Revenue is allowed. (AY. 2017-18)
ACIT v. Greater Kailash Hospital (P) Ltd (2023) 157 taxmann.com 644 (2024) 227 TTJ 398 / 234 DTR 200 / (Indore) (Trib)
ACIT v. Dr. Anil Bandi (2023) 157 taxmann.com 644 (2024) 227 TTJ 398 / 234 DTR 200 / (Indore)(Trib)
ACIT v. Dr. Raddhika Bandi (2023) 157 taxmann.com 644 2024) 227 TTJ 398 / 234 DTR 200 (Indore)(Trib)

2213 **S. 153A: Assessment-Search-No incriminating documents-Loose sheet-Not estimate actual expenditure-Addition is not valid-Protective addition-Addition is confirmed in the assessment of director-No protective addition can be made in the assessment of the company.**
Held that addition cannot be made when there is no incriminating material found. Loose sheet is not estimate but actual expenditure hence, addition is deleted. Once the addition is confirmed in the assessment of director, no protective addition can be made in the assessment of the Company. (AY. 2012-13, 2014-15 to 2018-19)
Mewar Hospital (P) Ltd. v. ACIT (2023) 37 NYPTTJ 1438/ (2024) 227 TTJ 145 (Jodhpur) (Trib)

2214 **S. 153A: Assessment-Search-Assessment of undisclosed income-Procedure to be followed-No pendency of proceedings-Order of Tribunal is affirmed. [S. 132]**
The Tribunal held that there were no assessment proceedings pending on the date of initiation proceedings under section 153A, for them to abate. High Court held that the Tribunal was perfectly within the statutory framework in making a remand directing the Assessing Officer to carry out reassessment for the assessment year 2002-03, which stood completed as on the date of initiation of section 153A proceedings, if some incriminating material seized during the search were available. (AY. 2002-03)
Asst. CIT v. Satish Kumar Keshri [2023] 156 taxmann.com 547 / (2024)460 ITR 480 (Pat.) (HC)

2215 **S. 153A: Assessment-Search-Suppression of sales-Three parties-Extrapolation of sales justified only as regards three parties-Order of CIT(A) restricting the gross profit rate only in respect of three parties is justified. [S. 132, 153C]**
Held that the Commissioner (Appeals) is justified in rejecting the extrapolation made by the Assessing Officer on the total turnover of the assessee because, if there were sales made outside the books of account to certain parties, the assessee's entire turnover could not be taken as suppressed turnover in the absence of any documentary evidence to substantiate it. The addition of gross profit ratio of 8. 6 per cent of such sales declared by the assessee on total sales as calculated and confirmed by the Commissioner (Appeals), is upheld. Whatsapp chat messages did not pertain to the year under

consideration and, therefore, the extrapolation is justified only with regard to these three parties, and the addition is to be reduced accordingly. Order of CIT(A) is affirmed. (AY. 2021-22)
Gurdip Cycle Industries v. Dy. CIT (2024)116 ITR 410 / 165 taxmann.com 299 (Chd.) (Trib)

S. 153A: Assessment-Search-No incriminating material was found-Addition is deleted. [S. 132] 2216
Held that when no incriminating material is found, addition cannot be made. (AY. 2008-09, 2009-10, 2010-11)
Dynamic Infraprojects P. Ltd. v. Dy. CIT (2024)116 ITR 16 (SN)(Delhi)(Trib)
Dynamic Infraplanners P. Ltd v. Dy. CIT (2024)116 ITR 16 (SN)(Delhi)(Trib)

S. 153A: Assessment-Search-Unsecured Loans-Unexplained income-Penalty-Amounts carried over from previous year cannot be assessed as undisclosed income of the current year-New loans-Failure to establish credit worthiness-Addition is affirmed-Unabated assessment-Purchase and sale of land-No addition can be made merely on the basis of annual information return. [S. 68, 132, 271(1)(c), 276C] 2217
Held that the amounts carried over from previous year cannot be assessed as undisclosed income of the current year. As regards new loans, the assessee failed to establish credit worthiness hence, the addition is affirmed. As regards unabated assessment in respect of purchase and sale of land, addition cannot be made merely on the basis of annual information return. (AY. 2011-12, 2012-13, 2014-15, 2017-18)
Dy. CIT v. Nagin A. Vaghela (2024)116 ITR 25 (SN)(Ahd.) (Trib)

S. 153A: Assessment-Search-Additional ground admitted-Seized document related to third party-Proceedings to be transferred to Assessing Officer of third party-No satisfaction note prepared and no proceeding under Sectionb153C is initiated-Employee of searched company-Proceedings under section 153A is invalid. [S. 132, 153C] 2218
Held that when the seized document pertains to a third party, proceedings must be transferred to Assessing Officer of third party. On facts neither was a satisfaction note prepared nor were proceedings under Section 153C initiated. Merely because the assessee is an employee of the searched company, proceedings under section 153A are invalid. (AY. 2011-12, 2016-17, 2017-18)
Dy. CIT v. Sushil Tyagi (2024) 115 ITR 90 (SN)(Delhi)(Trib)

S. 153A: Assessment-Search-Suppression of sales-Running retail outlets dealing in gold-Assessing Officer is directed to make estimation of gross profit rate on suppressed sales. [S. 142(1)] 2219
Held that no addition could be made for completed assessment in the absence of any incriminating material. That the suppressed sales for assessment years 2017-18, 2018-19 and part of 2019-20 with respect to P's unit were merely extrapolated sales based on three months' unaccounted sales of assessment year 2019-20. There was no evidence of suppression of sales in assessment years 2017-18, 2018-19 and remaining months of 2019-20. It was trite law that no addition could be made merely on the basis of assumption, conjectures or surmises. Unless evidence of suppression of sales in relevant

years was brought on record, the suppressed sales for only a part of the month could not be extrapolated for those years. Therefore, the assessee rightly offered the additional income only in respect of sales suppression detected during the search by applying the gross profit rate of accounted sales as per the books of account. (AY. 2013-14 to 2019-20)
New Saravana Stores Bramandamai v. Dy. CIT (2024)114 ITR 54 (SN) (Chennai) (Trib)

2220 **S. 153A: Assessment-Search-Suppression of sales-Assessing Officer to make estimation of gross profit rate on suppressed sales-Without evidence of suppression of sales, extrapolation of suppressed sales of part of month for those years impermissible-Addition can be made only for sales suppression detected during search applying gross profit rate of sales accounted in books of account. [S. 132]**
Held that no addition could be made for completed assessment in the absence of any incriminating material. That the suppressed sales for assessment years 2017-18, 2018-19 and part of 2019-20 with respect to P's unit were merely extrapolated sales based on three months' unaccounted sales of assessment year 2019-20. There was no evidence of suppression of sales in assessment years 2017-18, 2018-19 and remaining months of 2019-20. It was trite law that no addition could be made merely on the basis of assumption, conjectures or surmises. Unless evidence of suppression of sales in relevant years was brought on record, the suppressed sales for only a part of the month could not be extrapolated for those years. Therefore, the assessee had rightly offered the additional income only in respect of sales suppression detected at the time of search by applying the gross profit rate of accounted sales per the books of account. (AY. 2013-14 to 2019-20)
New Saravana Stores Bramandamai v Dy. CIT (2024)114 ITR 54(SN)(Chennai)(Trib)

2221 **S. 153A: Assessment-Search-Assessment completed-Prior to date of search-No incriminating material-Addition is bad in law-Fresh claim cannot be entertained-Assessments for years for which assessments abate-Assessee can lodge new claim not made in regular return of income-Statement-Retraction-Merely on the basis of statement addition cannot be made, if assessee shows he was wrong on facts he admitted. [S. 139,143(3)]**
Held, that the assessment year did not abate and the disallowance was not based on any incriminating material found in relation thereto in the course of search. The Assessing Officer had made the addition on reappraisal of the claim made in the return, which had been accepted in the original assessment under section 143(3) of the Act. In the absence of any incriminating material to justify the addition, the disallowance could not have been legally made in the unabated assessment year. Held that the additional ground of the assessee raising a fresh claim for deduction of loss incurred at the special economic zone unit while computing book profits under section 115JB of the Act for the assessment year 2010-11 for which the assessment had not abated, could not be entertained. Assessments for years for which assessments abate the assessee can lodge new claim not made in regular return of income. Tribunal also held that merely on the basis of statement, addition cannot be made, if assessee shows he was wrong on facts he admitted. (AY. 2009-10 to 2012-13, 2014-15)
IPCA Laboratories Ltd. v. Dy. CIT (2024)113 ITR 53/ 230 TTJ 409(Mum.)(Trib)

S. 153A: Assessment-Search-Income from undisclosed sources-Hotel business-Cost of construction of hotel building-Valuation referred to Departmental Valuation Officer-Difference in value cannot be added as undisclosed income-Rejection of books of account-Addition is not justified-Business loss-Carry forward-Allowed current year business loss and carry forward thereof for set off in subsequent years. [S. 69, 145 (3)] 2222
Held that merely on the basis of valuation report of the Department Valuation Officer, addition cannot be made. Held that as the whole basis of rejection of books of account was the difference in amount invested in the building and that was held not justified, there was no justifiable basis for rejection of books of account. That the only ground for disallowing the current year's business loss and not allowing it to be carried forward was rejection of books of account under section 145(3) of the Act. Since, the very basis of rejection of books of account was not sustainable, there was no basis for denying the current year business loss and carry forward thereof for set off in subsequent years. (AY. 2017-18 to 2019-20)
Khanna Infrabuild P. Ltd. v. Dy. CIT (2024)113 ITR 595/231 TTJ 530 (Chd.) (Trib)

S. 153A: Assessment-Search-Cannot make a fresh claim for deduction under section 80-IA(4) for first time in return of income filed in response to notice issued under section 153A, pursuant to search conducted under section 132, in unabated/completed assessment as on date of search-In case of abated assessments, like Assessing Officer who can make assessment based on incriminating materials and any other information made available to him, including information furnished in return of income, assessee can claim all deductions towards any income or expenditure including under section 80IA(4). [S. 80IA(4), 132, 139(1), 143(3)] 2223
The assessee is engaged in the business of development of infrastructure projects. The assessee filed its original return of income for the assessment year 2009-10 admitting a total income of certain amount. The assessment had been completed under section 143(3) accepting the returned income. Consequent to the search, a notice under section 153A was issued and served on the assessee, requiring the assessee to file a return of income. In response to the notice under section 153A, the assessee filed a return of income admitting total income of certain amount, after claiming a deduction under section 80IA(4), for the first time, in respect of profits and gains derived from the development of infrastructure projects. The Assessing Officer rejected the fresh claim of deduction under section 80IA(4), for the reason that the said deduction could not be claimed during the proceedings under section 153A, as no such claim was made in the return of income originally filed by the assessee under section 139(1). On appeal, the Commissioner (Appeals) held that in an assessment pursuant to notice under section 153A, a statutory deduction not hitherto claimed under section 139(1) could also be claimed. Therefore, by taking note of projects executed by the assessee in light of the agreements between the assessee and the relevant State or Central Governments, the Commissioner (Appeals) held that the assessee is eligible for claiming deduction under section 80IA(4). On appeal the Tribunal held that an assessee cannot make a fresh claim for deduction under section 80IA(4) for first time in return of income filed in response to notice issued under section 153A, pursuant to search conducted under section 132, in unabated/completed assessment as on date of search. However, in case of abated assessments, like Assessing Officer who can make assessment based on incriminating materials and any other information made available

to him, including information furnished in return of income, assessee can claim all deductions towards any income or expenditure including under section 80IA(4), as if it is a first return of income and fresh assessment. Referred, CBDT Circular No. 7 of 2003, dated 5-9-2003. (AY. 2009-10 to 2012-13, 2014-15)
Dy. CIT v. SEW Infrastructure Ltd. (2024) 209 ITD 1 / (2025) 233 TTJ 139 / 245 DTR 145 (SB)(Hyd) (Trib)

2224 **S. 153A: Assessment-Search-Undisclosed income-Less than Rs. 50 lakhs-Reassessment beyond six years is bad in law-Reassessment is bad in law. [S. 69, 132]**
A search was conducted upon assessee during which certain documents were found and seized which showed that assessee had made substantial amount of unexplained investment in purchase as well as on construction/renovation of immovable properties, which had not been shown by assessee in his accounts/ITR. Accordingly, on basis of DVO's report he arrived at satisfaction that aggregate of income of assessee which had escaped for relevant assessment years was more than Rs. 50 lakhs, hence he reassessed income of assessee under section 153A. However, there was no difference found between investment disclosed by assessee in books of account as compared to DVO's report. Further, DVO's report on standalone basis without any corroborating material cannot be construed as incriminating material. Tribunal held, that since evidence relating to undisclosed investments in respect of relevant assessment years as defined in Explanation 1 to 4th Proviso of section 153A(1) was less than Rs. 50 lakhs, reopening of assessment of relevant years being beyond six years is bad in law and hence, quashed. (AY. 2009-10, 2011-12)
Shamsher Singh. v. ACIT (2024) 209 ITD 138 (Chd.) (Trib.)

2225 **S. 153A: Assessment-Search-Unabated assessments-No incriminating material is found-Addition is deleted. [S. 68, 69, 69C, 132]**
Held that in case of completed/unabated assessments, no addition can be made by Assessing Officer in absence of any incriminating material found during course of search under section 132. (AY. 2015-16, 2016-17)
Shashi Agarwal (Smt) v. Dy. CIT (2024) 209 ITD 360 (Lucknow) (Trib.)

2226 **S. 153A: Assessment-Search-Bogus purchases and sales-No evidence was found during search or in course of assessment proceedings to prove sellers and buyers bogus-Profit estimated on unproved purchases and 5 Per Cent profit on unproved sales is held to be not proper. [S. 69C]**
Held, that the Commissioner (Appeals) having rejected the books of account, ought to have estimated the income of the assessee for the whole year: he could not estimate the profit merely on the alleged undisclosed sales or unproved purchases. Therefore, the addition per se of unproved purchases and unproved sales could not be made in the hands of the assessee and the question of estimation of the profit thereon did not survive. (AY. 2014-15 to 2020-21)
Bee Pee Rollers P. Ltd. v. Asst. CIT (2024) 110 ITR 402 (Cuttack) (Trib)
Bajrangbali Re-Rollers Pvt. Ltd. v. Asst. CIT (2024) 110 ITR 402 (Cuttack) (Trib)
Bajrangbali Steel Industries P. Ltd v. Asst. CIT (2024) 110 ITR 402 (Cuttack (Trib)

S. 153A: Assessment-Search-Unabated assessment-No incriminating material-Addition is not valid. [S. 68, 132] 2227

A Search u/s. 132 of the Act conducted on 20. 04. 2017. As on the date of search, no assessment proceedings were pending in the case of the assessee and the AO had made addition by disallowing 10% of expenses claimed in the P&L Account by stating that no vouchers / bills, etc. have been submitted and has further made addition of advances received from customers due to non-furnishing of confirmation letters, ledgers and necessary documentary evidences, addition u/s. 68 on account of unexplained cash credit being unsecured loans due to non-furnishing of any confirmation with ledgers. CIT (A) deleted the disallowances. On appeal the Tribunal held that since the case of the assessee is of completed assessment years and no pending proceedings as on the date of search, additions could not have been made without any incriminating material or documents found during the course of search. (AY. 2011-12 and 2012-13)

ACIT v. Dynamic Infraplanners Pvt. Ltd. (2024) 112 ITR 174 (Delhi) (Trib.)

S. 153A: Assessment-Search-Unexplained expenditure-Payment of commission-Bogus sales-Gross profit offered to tax-Gross profit is available to set off-Unaccounted advances paid to employees-Only remaining amount is taxable-Stock-Valuation at average rate of method is acceptable-Addition is deleted-Undisclosed income is accepted-Further addition towards purchases is not justified. [S. 69, 69C, 132, 133] 2228

Held that the assessee had disclosed gross profit at a rate ranging between 1. 6 per cent and 5 per cent on bogus sales of knitted cloth and, therefore, the commission for procuring the bogus purchase and sale so determined by the Assessing Officer stood covered by this gross profit and there could not be any separate addition in this regard. Hence, the addition sustained by the Commissioner (Appeals) was directed to be deleted. The gross profit, which was sustained, being an intangible addition, was available to the assessee to be set off against the addition towards unexplained expenditure and towards unaccounted advances paid to employees. Only the remaining amount could be brought to tax. That the unaccounted receivables, which were brought to tax as undisclosed income at the time of survey, were available to the assessee to make subsequent purchases, which again remained unaccounted for and were sought to be taxed by the authorities. Given that the amount had already been brought to tax in the year under consideration, there could not be any further addition on utilisation of that amount towards purchases. Therefore, the addition to the extent sustained by the Commissioner (Appeals) was directed to be deleted. Held that the stock had to be valued at cost after reducing the gross profit rate. (AY. 2013-14, 2015-16 to 2018-19)

Seo Lehenga House v. Dy. CIT (2024) 111 ITR 681 (Chd.) (Trib)

S. 153A: Assessment-Search-Cost of construction of hotel building-Original assessment completed and not abated on date of search-No incriminating material is found-Reference to Departmental valuation officer is not valid-Addition is deleted-Cost of construction of hotel building prior to commencement of hotel business-Capital invested by shareholders-Addition is deleted. [S. 69, 132, 143(2)] 2229

Held that the time for initiating original scrutiny assessment under section 143(3), by issue of notice under section 143(2) of the Act, in this case had already lapsed on the date of search action, which meant that the original assessment in this case

stood completed and not abated on the date of search. The matter was referred to the Departmental Valuation Officer after the search action at the premises of the assessee. However, no incriminating material whatsoever was found during the search action, which could have been stated to be a trigger point to refer the matter to the Departmental Valuation Officer. The reference to the Departmental Valuation Officer was not valid. That during the course of search, no incriminating material was found exhibiting unexplained investment by the assessee, and merely, on the basis of Departmental Valuation Officer's report, the addition could not be made. That the assessee-company's business had not commenced and the construction of the building was done out of the capital invested by the shareholders and hence, there was no case of earning of any income, much less any income from undisclosed sources. Thus, the additions made in the case of the assessee could not be held to be justified and the same were accordingly ordered to be deleted. (AY. 2013-14, 2015-16, 2016-17)
Khanna Infrabuild P. Ltd. v. Dy. CIT (2024) 110 ITR 161 / 227 TTJ 97 / 233 DTR 17 (Chd.) (Trib)

2230 **S. 153A: Assessment-Search-No incriminating material is found-Addition is deleted. [S. 148]**
Held that appeal the addition of Rs. 50 lakhs was not based on any incriminating material found at the time of search. Therefore, the Assessing Officer was directed to delete the addition. (AY. 2005-06)
Poonam Promoters and Developers P. Ltd. v. Asst. CIT (2024)110 ITR 28 (SN) (Delhi)(Trib)

2231 **S. 153A: Assessment-Search-Pendency of proceedings-Abated-Non-est assessment-Proceedings abated-Appeal of Revenue is dismissed. [S. 132, 143(3)]**
Held that where assessment proceedings under section 143(3) were pending at time of initiation of search under section 132, the proceedings under section 143(3) got abated and there was no occasion for Assessing Officer to pass assessment order in terms of second proviso to section 153A(1). Therefore, assessment order passed by Assessing Officer under section 143(3) is non-est. Appeal of Revenue is dismissed. (AY. 2008-09)
Himatsingka Seide Ltd. v. DCIT (2024) 206 ITD 371 (Kol.) (Trib.)

2232 **S. 153A: Assessment-Search-Share certificates and contract notes seized-Not incriminating in nature-Capital gains-Addition as cash credit is not justified-Entitle to exemption. [S. 10(38), 45, 68, 132]**
Assessment of assessee for relevant assessment year was completed. Subsequently, a search and seizure operation was carried at business and residential premises of a group company and assessee, being part of said group was also searched on same date along with other family members. In course of assessment, Assessing Officer noticed that assessee had claimed exemption of LTCG earned in respect of sale of shares under section 10(38). Assessing Officer on basis of seized documents held that LTCG disclosed by assessee represented unaccounted money and there was no genuine or bona fide purchase and sale of shares. Accordingly, he made an addition under section 68 treating same as unexplained cash credit. CIT(A) up held the addition. On appeal the Tribunal held that seized documents (share certificates and contract notes) from a bank locker did not belong to assessee but were in name of and belonged jointly to

father and Grandmother of assessee. Locker was neither operated by assessee and nor did assessee have its possession. Further it was observed that pursuant to scheme of amalgamation approved by High Court, assessee had received shares of AGL in lieu of shares held in MGPL and shares of AGL were received and credited in D-mat account of assessee. Assessee had sold certain shares of AGL and had disclosed LTCG on sale of shares of AGL as part of original return of income filed well before date of search. The assessee had purchased shares of company MGPL during financial year 2010-11 relevant to assessment year 2011-12, said transaction did not pertain to impugned assessment years. In view of aforesaid facts and circumstances, share certificates and contract notes seized by Assessing Officer were not incriminating in nature and in fact same would corroborate and confirm disclosed transaction of purchase of shares of MGPL by assessee. Since, addition made by Assessing Officer during reassessment proceedings was not based on any incriminating material during search and seizure action, same being a case of completed/unabated assessment, impugned addition is deleted. (AY. 2012-13, 2013-14)

Ashish Jain. v. DCIT (2024) 111 ITR 152 / 205 ITD 455/228 TTJ 405 (Chd.) (Trib.)
Bipin Jain v. DCIT (2024) 111 ITR 152 / 205 ITD 455 /228 TTJ 405 (Chd.) (Trib.)
Akil Jain v. DCIT (2024) 111 ITR 152 / 205 ITD 455 /228 TTJ 405 (Chd.) (Trib.)

S. 153A: Assessment-Search-No incriminating material was found during search-Addition is deleted. [S. 132] 2233

Held that where no incriminating material was found during search, addition made by Assessing Officer on account of undisclosed income is directed to be deleted. (AY. 2005-06)

Poonam Promoters and Developers (P.) Ltd. v. ACIT (2024) 205 ITD 534 (Delhi) (Trib.)

S. 153A: Assessment-Search –Limitation-Information-Article was applicable for information that related to period on or after 1-4-2011-Not valid reference-Order is barred by limitation-DTAA-India-Swiss. [S. 143(3), 153B, Art. 26] 2234

A search was conducted in case of assessee and a Swiss Bank account statement in name of 'S', ex-husband of assessee was found. Assessee had stated that said bank statement did not belong to her and 'S' had stated that he was in no way either directly or indirectly connected with the said bank account. Assessing Officer, therefore, subsequently sent a proposal through proper channel to FT & TR Division, Government of India requesting for information under exchange of information Article of India Swiss DTAA and response was received that there was no relation between assessee and said bank and thereafter assessment was completed. On appeal the Tribunal held that information sought pertaining to assessee for assessment year 2008-09 could not have been received by revenue since article 26 of Indo Swiss Treaty regarding exchange of information was applicable for information that related to period on or after 1-4-2011 and therefore, it was not a valid reference. Consequently, claim of revenue that period of limitation was extended by one year under section 153B based on reference was untenable and, accordingly, assessment order dated 29-12-2016 passed by Assessing Officer was clearly barred by limitation and was liable to be quashed. (AY. 2008-09)

Priti Milan Mehta v. DCIT (2024) 204 ITD 228 (Mum.) (Trib.)

2235 **S. 153A: Assessment-Search-Less than 50 lakhs-Assessment beyond six years is bad in law. [S. 69, 132]**

Held that the assessment beyond six years but not more than ten years can be reopened u/s 153A of the Act only if the AO is in possession of evidence depicting the escapement of income exceeeding 50 lakhs. Tribunal held that such provision extending the scope of assessment beyond six years from the date of search has to be construed strictly and the evidence relied upon by the AO in such assessment of extended period must be tangible evidence. Appeal is allowed. (AY. 2009-10, 2011-12)

Kawaljit Singh v. ACIT (2024) 204 ITD 307 (Chd)(Trib)

2236 **S. 153B: Assessment-Search and seizure-Time limit-Revision-Conclusion of search-Locker-Last panchnamas-No seizure-Strict interpretation of statutes-Strict rule of interpretation-Not barred by limitation-Reserving the assessee to raise contentions regarding jurisdiction error vis-a-vis limitation period before appropriate authority despite order passed against assessee. [S. 132, 263, Art. 136]**

Search covered various premises and lockers, including Locker No. s 299, 2070, and 1320. Subsequent searches on 2930-4-2021, revealed no seizures, and panchnamas were issued. Subsequently, an assessment order pertaining to assessment year 2015-16 was framed by ACIT on 31-3-2023. Principal Commissioner invoked section 263 and issued a notice on 24-8-2023, observing that assessment order passed by ACIT was erroneous and prejudicial to interest of revenue. Assessee contested the said notice by asserting that as per panchnamas dated 29-4-2021 and 30-4-2021 framed in respect of aforesaid lockers, no seizures were made and in absence of any seizure, search stood concluded on 2-3-2021, when first panchnamas were drawn up and therefore, period of limitation for passing an order under section 153A expired on 31-3-2022 and this delay of one year in passing reassessment orders could not be condoned. It was held that restraint and revocation orders pertaining to Locker 299 unequivocally established that Locker 299 underwent its initial search on 29-4-2021, even though it resulted in no recoveries and that date marked onset of limitation period prescribed under section 153B. High Court held that search operation being an ongoing process that definitely concluded on 29-4-2021, when Locker 299 was inspected that rendered assessment under section 153A, which culminated on 31-3-2023, within time limit prescribed under section 153B. On SLP it was noted that order was passed without issuing a formal notice to respondent, Department or calling for a response from Department although standing counsel for Department was present in Court. Therefore, High Court having passed order without having benefit of response of respondent-Department, SLP filed by assessee was disposed of by reserving liberty to assessee herein to raise contentions regarding jurisdictional error vis-a-vis limitation period before appropriate authority despite impugned order passed against assessee. (AY. 2015-16)

Anuradha Bakshi v. PCIT (Central) (2024) 298 Taxman 548/ 465 ITR 793/ 339 CTR 394 (SC)

Editorial: Anuradha Bakshi v. PCIT (Central) (2024) 296 Taxman 355 /465 ITR 786/ 339 CTR 395 (Delhi) (HC)

S. 153B: Assessment-Search-Time limit-Limitation-Last panchanama-Subsequent panchnama revoking prohibitory order without seizure of material-Time limit is not extended-Restraint order not lifted within one month of assessment order-Central Board Of Direct Taxes instruction-Release of prohibitory order, panchnama and assessment order is invalid-Central Board Of Direct Taxes Circular, Dated 3-7-2002-Last panchnama cancellation of restraint order-Second Panchnama is not last panchnama of conclusion of search-Electronic documents used as evidence-Mandatory conditions of Section 65B of Indian Evidence Act is not complied with-Not admissible evidence-Bogus purchases-Cash purchase of tobacco from grey market-Estimation of profit at 12.5 Per Cent is proper. [S. 132(3), 132(8A), 143(3), 153A, Indian Evidence Act, 1872, S. 65B (2)(d), 65B(4)] 2237

Allowing the appeal the Tribunal held that subsequent panchnama merely revokes prohibitory order without any seizure of material, the time limit is not extended. Further, the restraint order was not lifted within one month of assessment order. Release of prohibitory order, panchnama and assessment order is invalid. The Tribunal referred Central Board Of Direct Taxes Circular, Dated 3-7-2002. Last panchnama cancellation of restraint order is considered as second Panchnama is not the last panchnama of conclusion of search. Order is barred by limitation. Use of electronic documents used as evidence the mandatory conditions of Section 65B of Indian Evidence Act is not complied with hence not admissible as evidence. As regards bogus purchases, cash purchase of tobacco from grey market is concerned estimation of profit at 12. 5 Per Cent is held to be proper. (AY. 2012-13 to 2020-21)

Polisetty Somasundaram v. Dy. CIT (2024)115 ITR 548 (Visakhapatnam) (Trib)

S. 153C: Assessment-Income of any other person-Search and seizure-Satisfaction note pertained to non-searched entity and material which was alluded pertaining to assessment year 2019-20 only-Notice pertaining to AYs 2014-15, 2015-16, 2016-17, 2017-18, 2018-19 and 2020-21 is quashed and set aside by High Court-SLP of Revenue dismissed. [S. 132, Art. 136] 2238

The assessee filed writ petition for the quashing of notices issued under section 153C for the assessment years 2014-15 to 2020-21, on the ground that the proceedings were illegal and without jurisdiction. It contended that the satisfaction note revealed that the incriminating material pertained only to the assessment year 2019-20, yet the action under section 153C encompassed assessment years 2014-15 to 2020-21. Allowing the petition the Court held that the satisfaction note pertained to non-searched entity, and material which was alluded to be pertained to assessment year 2019-20 only. Accordingly, the action under section 153C, pertaining to AYs 2014-15, 2015-16, 2016-17, 2017-18, 2018-19 and 2020-21 were quashed and set aside. However, insofar as Assessment Year 2019-20 was concerned, same was left untouched and all rights and contentions of respective parties were kept open to be addressed in ongoing assessment proceedings for Assessment Year 2019-20. SLP of Revenue dismissed. (AY. 2014-15, 2015-16, 2016-17, 2017-18, 2018-19 and 2020-21)

Dev Technofab Ltd. v. DCIT [2024] 301 Taxman 72 /471 ITR 430 (SC)

Editorial: Dev Technofab Ltd. v. DCIT, [2024] 166 taxmann.com 514/471 ITR 423 (Delhi) (HC)

2239 **S. 153C: Assessment-Income of any other person-Search and seizure-Loose sheet-Not form part of books of account-diaries/loose sheets-Order of High Court quashing the addition is affirmed-SLP of Revenue is dismissed. [S. 132, Art. 136]**

High Court held that it is established in law that a sheet of paper containing typed entries and in loose form, not shown to form part of books of account regularly maintained by assessee or his business entities, do not constitute material evidence and, therefore, action taken by revenue against assessee based on material contained in diaries/loose sheets, was contrary to law and, thus, notices under section 153C were required to be set aside, as same were void and illegal. SLP filed against order of High Court is dismissed. (AY. 2012-13 to 2018-19)

Dy. CIT v. Sunil Kumar Sharma (2024) 300 Taxman 601 (SC)

Dy. CIT v. Sunil Kumar Sharma (2024) 469 ITR 271 /(2025) 302 Taxman 9 (SC)

Editorial: Dy. CIT v. Sunil Kumar Sharma (2024) 159 taxmann.com 179 /469 ITR 197 (Karn.) (HC)

2240 **S. 153C: Assessment-Income of any other person-Search and seizure-Satisfaction note is required to be recorded under section 153C for each assessment year and where a consolidated satisfaction note had been recorded for different assessment years, it would vitiate entire assessment proceedings-Order of High Court is affirmed-SLP of Revenue is dismissed. [S. 153A, Art. 136]**

Dismissing the appeal of the Revenue the High Court held that satisfaction note is required to be recorded under section 153C for each assessment year and in the impugned proceedings, a consolidated satisfaction note has been recorded for different assessment years, which also vitiates the entire assessment proceedings. In view of all these findings, it is said that the appeals do not have any substance for seeking intervention by the Court. No substantial question of law. SLP of Revenue is dismissed. (AY. 2012-13 to 2018-19)

CIT (Appeals) v. Sunil Kumar Sharma (2024) 300 Taxman 601 (SC)

Editorial: Dy. CIT v. Sunil Kumar Sharma (2024) 159 taxmann.com 179(Karn.) (HC)

2241 **S. 153C: Assessment-Income of any other person-Search-Failure to appear and make submissions on merits-Court will not examine documents to see if they were incriminating-Order of High Court dismissing the writ petition is affirmed-SLP is dismissed. [S. 264, Art. 136]**

The High Court dismissed the assessee's writ petition against an order of the Commissioner rejecting the assessee's application under section 264 of the Income-tax Act, 1961, challenging an order of assessment under section 153C holding that the Commissioner having found that despite several opportunities being granted the assessee did not appear or make submissions on the merits of the case, no fault could be found with the Commissioner declining to interfere with the assessment. The court further held that in writ proceedings, it was difficult for the court to examine the documents seized and determine if in fact the documents were incriminating for the assessee, that the court had to be satisfied that the Commissioner's orders were not unfair, unjust or irrational and were consistent with the basic procedural requirements, and that on

none of these counts, did the orders of the Commissioner warrant interference. SLP is dismissed. (AY. 2004-05 to 2009-10)
Shushre Securities Pvt. Ltd. v. CIT (2024)462 ITR 148 /161 taxmann.com 639 (SC)
Editorial: Ganpati Fincap Services P. Ltd. v. CIT (2017) 395 ITR 692/82 taxmann.com 408 (Delhi) (HC)

S. 153C: Assessment-Income of any other person-Recording of satisfaction is mandatory by the Assessing Officer of searched person–Order of High Court affirming the order of Tribunal is affirmed-SLP of Revenue is dismissed. [S. 143(3)] 2242
Assessing Officer of searched person issued notice under section 153C against assessee for assessment years 2005-06 to 2010-11 and a notice under section 143(3) for assessment year 2011-12. Tribunal held that there was no satisfaction recorded by Assessing Officer of searched person, which is mandatorily required for issuing a notice under section 153C. High Court held that recording of satisfaction note is pre-requisite and same must be prepared by Assessing Officer before he transmits record to other Assessing Officer who has jurisdiction over such other person under section 153C and since in instant case satisfaction note was not recorded by Assessing Officer of searched person, Tribunal had rightly quashed assessment on account of lack of jurisdiction. SLP of Revenue is dismissed. (AY. 2011-12)
PCIT v. G. Lakshmi Aruna (Smt.) (2024) 297 Taxman 396 (SC)
Editorial: PCIT v. G. Lakshmi Aruna (2023) 150 taxmann.com 107 /333 CTR 257/225 DTR 417 (Karn.) (HC)

S. 153C: Assessment-Income of any other person-Search-Not discharged the burden of having agricultural income-Addition as undisclosed income is justified-Order of High Court is affirmed. [S. 260A, Art. 136] 2243
Court held that the assessee admittedly had a direct connection with the premises searched, the documents recovered during the search necessitated initiation of action under section 153A, read with section 153C of the Income-tax Act, 1961, and that therefore the proceedings were valid; and (b) that the burden of proving that the amount was agricultural income was on the assessee. That it was clear from the findings recorded by the authorities that the assessment of the amount as undisclosed income was justified, and that therefore no question of law arose. Order of Tribunal is affirmed. SLP of assessee is dismissed. (AY. 2004-05 to 2009-10)
K. M. Fathima v. CIT (2024)461 ITR 85/ 297 Taxman 385 (SC)
Editorial: Refer K. M. Fathima v. CIT (2022) 20 ITR-OL 439/(2024) 158 taxmann.com 630 (Ker.) (HC)

S. 153C: Assessment-Income of any other person-Search-Satisfaction note-Limitation-Where no satisfaction is recorded year of search has to be considered-High Court quashed the proceedings-SLP of Revenue is dismissed. [S. 132, 153A] 2244
Dismissing the appeal of the Revenue the Court held that the Tribunal was right in law in holding that the AY relevant to the financial year in which satisfaction note was recorded under section 153C of the Act, would be taken as the year of search for the purposes of clauses (a) and (b) of sub-section (1) of section 153A of the Act by making

reference to the first proviso to sub-section (1) of section 153C. Therefore, the Tribunal was right in law in holding that no satisfaction was recorded by the Assessing Officer of the searched person and the notice issued by the Assessing Officer under section 153C of the Act would be taken as the year of search for the purpose of clauses (a) and (b) of sub-section (1) of section 153A. The Tribunal was right in law in setting aside the assessment order passed for the AY. 2011-12 under the facts and circumstances of the case holding that there was no satisfaction recorded by the Assessing Officer of the searched person in so far as section 153A in the case of the assessee. Referred, *CIT v. Gopi Apartment (2014) 365 ITR 411 (All)(HC).* SLP of Revenue is dismissed. (AY. 2011-12)
PCIT v. Gali Janardhana Reddy (2024) 297 Taxman 62/463 ITR 697(SC)
Editorial: PCIT v. Gali Janardhana Reddy (2023) 152 taxmann.com 332/ 454 ITR 467 (Karn.) (HC)

2245 **S. 153C: Assessment-Income of any other person-Search-Notice issued prior to transfer of case-Notice and order is bad in law-The amendment by insertion of clause (c) in sub section (3) of section 124(3)(c) by Finance Act, 2016(2016) 384 ITR 1 (St), which came into effect from 1-6-2016 is prospective in nature-Order of High Court is affirmed-SLP of revenue is dismissed. [S. 124, 127(2), Art. 136]**
On writ the High Court held that a notice under section 153C was served on assessee on 11-5-2009 by DCIT, Central Circle 1(1). Meanwhile, an order under section 127(2) was issued on 20-7-2009 by Commissioner, Bangaluru and case of assessee was transferred from ACIT, Circle 6(1) to DCIT, Central Circle 1(1), Bangalore. However, notices under section 153C were issued by DCIT, Central Circle, Bangaluru on 11-5-2009 and furthermore, date of transfer of files from ACIT was 19-8-2009. High Court held that it was ex-facie apparent that notices under section 153C were issued prior to transfer of case and jurisdiction conferred on DCIT and since notice issued by DCIT, Circle-1(1), Bangalore, was without jurisdiction, all further proceedings would be rendered void ab initio. High Court also held that amendment by insertion of clause (c) in sub section (3) of section 124 by Finance Act, 2016 which came into effect from 1-6-2016 is prospective in nature. SLP filed by revenue against impugned order of High Court is dismissed. (AY. 2003-04 to 2008-09)
CIT v. Himalaya Drug Company (2024) 471 ITR 763/169 taxmann.com 244 (SC)
Editorial: CIT v. Himalaya Drug Company (2023) 22 ITR-OL 33(Karn)(HC)/ 2021 SCC online Kar 16067

2246 **S. 153C: Assessment-Income of any other person-Search-Recording of satisfaction-Copy in verbatim of satisfaction note of Assessing Officer of searched person-No jurisdictional error-Recording of satisfaction is valid. [S. 132, Art. 226]**
Held that while initiating proceedings under section 153C, it is sufficient for Assessing Officer to note in satisfaction note that documents seized from searched person belonged to another person. Fact that satisfaction note drawn by Assessing Officer of assessee was carbon copy of note of Assessing Officer of searched person, would not be reason to reject satisfaction note saying that Assessing Officer of assessee did not record his independent satisfaction. Legal requirement is satisfied. (AY. 2014-15)
Bhagwandas Rupchand Parwani v. ACIT (2024) 470 ITR 590 / 160 taxmann.com 7 (Guj.) (HC)

S. 153C: Assessment-Income of any other person-Search and seizure-Material pursuant to a search is relied upon-Assessing Officer is required to follow procedure as contemplated under section 153A, 153B and 153C and it is impermissible for Assessing Officer to continue regular assessment. [S. 132, 133A, 143(3), 153A, 260A] 2247

Dismissing the appeal of the Revenue the Court held, that Chapter VI of the IT Act contemplates the procedure for assessment, wherein various stipulations are provided in terms of sections 136 to 153 of the IT Act. Sections 153A, 153B and 153C have been inserted by the Finance Act, 2003 with effect from 1-6-2003, which specifically contemplates assessments in cases of search or requisition. Section 153A contains various stipulations with regard to the person searched and section 153C contains various stipulations with regard to such other person, other than the person searched. Therefore, once material pursuant to a search is relied upon, the Assessing Officer is required to follow the procedure as contemplated under sections 153A, 153B and 153C and it is impermissible for the Assessing Officer to continue the regular assessment. Order of Tribunal is affirmed. (AY. 2008-09)

PCIT v. VSL Mining Company (P.) Ltd. (2024) 301 Taxman 631 / (2025) 342 CTR 690 (Karn.)(HC)

S. 153C: Assessment-Income of any other person-Search-Loose Sheets of papers not shown to form part of books of accounts regularly maintained by assessee would not constitute material evidence-Reasonable opportunity to be provided to assessee before transfer of case in accordance with S. 127-Satisfaction Note to be recorded for each assessment year separately. [S. 127, 132, 153A, Art. 226] 2248

A Division Bench of the Hon'ble Karnataka High Court had to decide Writ Appeals filed against a common order of the Ld. Single Judge of the Hon'ble Court on questions relating to validity of notices issued under section 153C of the Act. The Hon'ble Court relied on landmark rulings of the Hon'ble Supreme Court and applied the tests laid down therein to observe that the action taken by Revenue against assessee based on material contained in diaries/loose sheets are contrary to law declared by the Hon'ble Supreme Court. Further, on the other issues, the Hon'ble Court observed that on perusal of material, it does not satisfy the ingredients of fair play embodied under section 127 of the Act. The Hon'ble Court also noted that Satisfaction Note is required to be recorded under section 153C for each assessment year and since in the instant case, a consolidated satisfaction note has been recorded, the same would vitiate entire assessment proceedings. Thus, ultimately it was held that the Ld. The single Judge had considered all the points and did not warrant any interference. Consequently, the appeals were rejected and the single Judge's order was confirmed. (AY. 2012-13 to 2018-19)

DCIT v. Sunil Kumar Sharma (2024) 469 ITR 197 / 159 taxmann.com 179 (Karn.) (HC)

Editorial: SLP of Revenue is dismissed, Dy. CIT v. Sunil Kumar Sharma (2024) 469 ITR 271/ 168 taxmann.com 77/302 Taxman 9 (SC)

2249 **S. 153C: Assessment-Income of any other person-Search-Reassessment-Time limit for notice-Search conducted in February 2022-Notice under S. 148 dated 30. 03. 2023 seeking to re-open assessment for A. Y. 2013-14-Relevant A.Y. fell beyond ten years block period set out in S. 153C and thus, notice was time barred. [S. 132, 148, 149(1), 153A, Art. 226]**

The Petitioner by way of a Writ Petition impugned the notice under section 148 of the Act issued for A. Y. 2013-14 on the ground that it was issued beyond limitation. The Hon'ble Court held that any search conducted after 01. 04. 2021 would cease to be regulated by section 153C (3) of the Act as it stood before the amendment and thus, it would have to meet the foundational tests as specified in the first proviso to section 149(1) of the Act. In light of a decision rendered by the Hon'ble Court in *PCIT v. Ojjus Medicare Pvt. Ltd. [2024] 161 taxmann.com 160/ 465 ITR 101 (Delhi) (HC)*, it was held that A. Y. 2013-14 would fall beyond the block period of ten years. Thus, the impugned notice was quashed and set aside. (AY. 2013-14)

Dinesh Jindal v. ACIT (2024) 469 ITR 32 / 164 taxmann.com 746 (Delhi) (HC)

2250 **S. 153C: Assessment-Income of any other person-Search and seizure-Satisfaction note pertained to non-searched entity and material which was alluded to pertained to assessment year 2019-20 only-Notice pertaining to AYs 2014-15, 2015-16, 2016-17, 2017-18, 2018-19 and 2020-21 is quashed and set aside. [S. 132, Art. 226]**

The assessee filed writ petition for the quashing of notices issued under section 153C for the assessment years 2014-15 to 2020-21, on the ground that the proceedings were illegal and without jurisdiction. It contended that the satisfaction note revealed that the incriminating material pertained only to the assessment year 2019-20, yet the action under section 153C encompassed assessment years 2014-15 to 2020-21. Allowing the petition the Court held that the satisfaction note pertained to non-searched entity, and material which was alluded pertained to assessment year 2019-20 only. Accordingly, the action under section 153C, pertaining to AYs 2014-15, 2015-16, 2016-17, 2017-18, 2018-19 and 2020-21 were quashed and set aside. However, insofar as Assessment Year 2019-20 was concerned, same was left untouched and all rights and contentions of respective parties were kept open to be addressed in ongoing assessment proceedings for Assessment Year 2019-20. (AY. 2014-15, 2015-16, 2016-17, 2017-18, 2018-19 and 2020-21)

Dev Technofab Ltd v. Dy. CIT ([2024] 166 taxmann.com 514 / 471 ITR 423 (Delhi) (HC)

Editorial: SLP of Revenue is dismissed, Dev Technofab Ltd. v. DCIT, [2024] 301 Taxman 72/471 ITR 430 (SC)

2251 **S. 153C: Assessment-Income of any other person-Search and seizure-Satisfaction note is required to be recorded under section 153C for each assessment year-Consolidated satisfaction note had been recorded for different assessment years, it would vitiate entire assessment proceedings. [S. 132, 260A]**

Dismissing the appeal of the Revenue, the Court held that satisfaction note is required to be recorded under section 153C for each assessment year and in the impugned proceedings, a consolidated satisfaction note has been recorded for different assessment years, which also vitiates the entire assessment proceedings. In view of all these

findings, it is said that the appeals do not have any substance for seeking intervention by the Court. No substantial question of law. (AY. 2012-13 to 2018-19)
Dy. CIT v. Sunil Kumar Sharma (2024) 159 taxmann.com 179(Karn.) (HC)
Editorial: CIT (Appeals) v. Sunil Kumar Sharma (2024) 300 Taxman 601 (SC)

S. 153C: Assessment-Income of any other person-Search and seizure-Loose sheet-Not form part of books of account-diaries/loose sheets-Order of Tribunal is affirmed-No substantial question of law. [S. 132, 153A, 260A] 2252
Dismissing the appeal of the Revenue, High Court held that it is established in law that a sheet of paper containing typed entries and in loose form, not shown to form part of books of account regularly maintained by assessee or his business entities, do not constitute material evidence and, therefore, action taken by revenue against assessee based on material contained in diaries/loose sheets, was contrary to law and, thus, notices under section 153C were required to be set aside. No substantial question of law. (AY. 2012-13 to 2018-19)
Dy. CIT v. Sunil Kumar Sharma (2024) 159 taxmann.com 179 (Karn.) (HC)
Editorial: CIT (Appeals) v. Sunil Kumar Sharma (2024) 300 Taxman 601 (SC)

S. 153C: Assessment-Income of any other person-Search-Merely on the basis of statement under section 132(4) without any other material discovered during the search-No addition can be made –Order of Tribunal deleting the addition is affirmed. [S. 132, 132(4), 143(3), 260A, 292B] 2253
Dismissing the appeal of the Revenue the Court held that the Tribunal has explicitly held that no addition has been made on the basis of any incriminating material found during the course of search. It is settled law that the date of initiation of assessment proceedings under S. 153C would be calculated from the date of handing over of the books of accounts, documents or assets seized to the jurisdictional AO of the non-searched person and not from the date of search. Therefore, the relevant assessment year in the present case would come under the block of six assessment years immediately preceding the assessment year in which the satisfaction note was recorded by the AO of the assessee-companies. Section 292B is not attracted on the facts of the case. Order of Tribunal deleting the addition is affirmed. (AY. 2011-12)
PCIT v. Delicate Realtors (P) Ltd (2024) 340 CTR 225 / 240 DTR 465 (Delhi) (HC)
PCIT v. Design Infracon (P) Ltd (2024) 340 CTR 225 / 240 DTR 465 (Delhi) (HC)
PCIT v. Pavitra Realcon (P) Ltd (2024) 340 CTR 225 / 240 DTR 465 (Delhi) (HC)

S. 153C: Assessment-Income of any other person-Search-Limitation-Block period Ten-year block period-Notice u/s 148 dated 31-3-2023-Notice for Assessment year 2013-14 is not sustainable. [S. 132, 147, 148, 149(1) 153A, Art. 226] 2254
Allowing the petition the Court held that where the search was conducted under section 132 on February 9, 2022, and notice was issued to the assessee on March 31, 2023, under section 148 the ten-year block period would be assessment years 2014-15 to 2023-24. The assessment year 2013-14 fell beyond the ten-year block period as stipulated under section 153C read with section 153A. Consequently, the notice under section 148 for the assessment year 2013-14 was unsustainable and hence, quashed. Court also

observed that under the provisions of section 149 of the Income-tax Act, 1961, any action for reassessment pertaining to an assessment year prior to April 1, 2021 can be sustained only if it be compliant with the timeframes specified under section 149(1)(b), section 153A or section 153C as the case may be and on the anvil of those provisions as they existed prior to the commencement of the Finance Act, 2021. (AY. 2013-14)
Flowmore Ltd. v. Dy. CIT (2024)467 ITR 177 / 64 taxmann.com 738 (Delhi)(HC)

2255 **S. 153C: Assessment-Income of any other person-Search--Issue raised in a writ petition was dismissed-Subsequent writ petition on same issue but with different grievance-Writ petition is dismissed as not maintainable. [Art. 226]**
Held, dismissing the writ petition that the substance of the writ petition was the proceedings in pursuance to the search and seizure operation conducted on the business and residential premises of the assessee and the very same issue was before the court in an earlier writ petition. Considering these facts, the writ petition was nothing but a gross abuse of process of the court. A litigant cannot be allowed to file a separate writ petition for each and every grievance or issue as and when he feels that the issue is there which was not raised in the earlier concluded proceedings between the same parties(AY. 2015-16 to 2020-21) (SJ)
Plasseri Pulikkal Muhammed Ali v. ACIT (2024)466 ITR 437/164 taxmann.com 1255 (Ker.) (HC)

2256 **S. 153C: Assessment-Income of any other person-Search-Opportunity of hearing was granted-Order is valid-Writ petition is dismissed. [Art. 226]**
Dismissing the writ petition the Court held, that it was evident from the recitals of the notice dated March 4, 2021 and show-cause notice dated December 22, 2020 that the Assessing Officer had recorded his satisfaction before initiating the section 153C proceedings and furthermore, on April 19, 2021, the assessee had been duly provided with the satisfaction note. Furthermore, the assessee had chosen not to reply to the notice in the initial stage despite having been given ample opportunities of hearing and now after the passing of the assessment order under section 153C of the Act, the assessee was assailing it on the fulcrum of inordinate delay. The present was not a case where the principles of natural justice had not been met or the Assessing Officer had not duly applied his mind before passing the order. Writ petition is dismissed. (AY. 2014-15)
Sunita Goel v. Dy. CIT (2024)466 ITR 404 /162 taxmann.com 740/(2025) 342 CTR 181 (Delhi) (HC)

2257 **S. 153C: Assessment-Income of any other person-Search and seizure-Limitation-Six years in respect of which assessment permitted to be reckoned-Date of commencement-Commences from date materials handed over to jurisdictional Assessing Officer of third person-Threshold limit of Rs. 50 Lakhs-Not qualifying criteria for each of relevant assessment year of period independently-Cumulative computation in excess of Rs. 50 Lakhs qualifies statutory requirements-Search assessment in respect of all searches conducted between 31-5-2003 and 31-3-2021-Legislative Intent-No immunity intended to be attached to assessments attaining closure before 31-3-2021-**

Date of receipt of books of account or documents or assets seized or requisitioned by jurisdictional Assessing Officer of non-searched person and not actual date of search-Amendments of 2017 is not applicable since search was conducted prior to introduction of amendments-Consequently extended ten year block period cannot be applied. [S. 132, 153A, 153C, 260A]

Dismissing the appeal of the Revenue the Court held that prior to the insertion of sections 153A, 153B and 153C of the Income-tax Act, 1961, an assessment in respect of a search case was regulated by Chapter XIV-B of the Act, comprising sections 158B to 158BI which embodied the concept of a block assessment. A block assessment in a search case undertaken under the provisions in Chapter XIV-B was ordained to be undertaken simultaneously and parallelly to a regular assessment. Contrary to the scheme underlying Chapter XIV-B, sections 153A, 153B and 153C contemplate a merger of regular assessments with those pursuant to a search. On a search being undertaken, under section 153A, the jurisdictional Assessing Officer is enabled to initiate an assessment or reassessment, in respect of the six assessment years immediately preceding the assessment year relevant to the year of search and also in respect of the "relevant assessment year", as defined by Explanation 1 to section 153A. Of equal significance is the introduction of the concept of abatement of all pending assessments. Amendments introduced in sections 153A, 153B and 153C by virtue of the Finance Act, 2017 ([2017] 393 ITR (St.) 1), for the first time adopted the concept of the "relevant assessment year" and provided an Explanation for the term and defined the expression "relevant assessment year". Both sections 153A and 153C embody non obstante clauses and are in express terms ordained to override sections 139, 147 to 149, 151 and 153. By virtue of the 2017 Act, amendments were introduced in section 153A in the year 2017 which included, inter alia, extension of the search assessment block to ten assessment years consequent to the addition of the stipulation of "relevant assessment year" which was defined to mean those years which would fall beyond the six-year block period but not later than ten assessment years. The 2017 Act also stipulated in the fourth proviso to the section, certain prerequisite conditions which would have to inevitably be shown to be satisfied before the search assessment could stretch to the "relevant assessment year". The preconditions include the prescription of income having escaped assessment and represented in the form of an asset amounting to or being "likely to amount to" Rs. 50 lakhs or more in the "relevant assessment year" or in aggregate in the "relevant assessment years". As in the case of section 153A, section 153C which pertains to the other person other than the entity subjected to search was also to apply to all searches that may have been undertaken between the period June 1, 2003 and March 31, 2021. In terms of that provision, the Assessing Officer is similarly empowered to undertake and initiate an assessment in respect of the other entity for the six assessment years and for "the relevant assessment year". The assessment years, which would consequently be thrown open for assessment or reassessment under section 153C follow lines pari materia with section 153A.

The first proviso to section 153C introduces a legal fiction on the basis of which the commencement date for computation of the six year or the ten-year block period is deemed to be the date of receipt of books of account by the jurisdictional Assessing Officer of the other party. The identification of the starting block for the purposes of

computation of the six year and ten year periods is governed by the first proviso to section 153C, which significantly shifts the reference to the point in section 153A(1), while defining the point from which the period of the "relevant assessment year" is to be calculated, to the date of receipt of the books of account, documents or assets seized by the jurisdictional Assessing Officer of the non-searched party. In the assessment under section 153C the starting point is the handing over of books of account or documents or assets seized during the search under section 132 of the searched party by the Assessing Officer to the jurisdictional Assessing Officer of the other person and that event constitutes the point from which the preceding six assessment years or the "relevant assessment year" has to be computed. (AY. 2010-11 to 2013-14)
PCIT v. Ojjus Medicare Pvt. Ltd. (2024)465 ITR 101/ 338 CTR 241 /161 taxmann.com 160 (Delhi) (HC)

2258 **S. 153C: Assessment-Income of any other person-Search-Block Assessment-Satisfaction note-Block period-Seized material must pertain to relevant assessment year-Bearing-Notices issued in absence of incriminating material based on non-speaking satisfaction notes unsustainable-Satisfaction notes in these petitions had alluded to incriminating material having been recovered for the assessment years 2013-14 and 2014-15, respectively, and the materials that were co relatable had been specifically identified. All other contentions of parties could be raised in the ongoing proceedings. [S. 132, 153A 158BB, Art. 226]**
On writ petitions challenging notices issued under section 153C contending that, in the absence of any incriminating material against the third party assessees having been seized during the search of the searched party under section 132, pertaining to the assessment years which were proposed to be reopened, the assumption of jurisdiction by the Assessing Officer was illegal and unsustainable, allowing the petitions, the Court held that except in two writ petitions forming part of this batch against the invocation of section 153C in respect of the assessment years 2013-14 to 2020-21, no incriminating material had been gathered or obtained. The flow of events contemplated under section 153C being firstly the receipt of books, account, documents or assets by the jurisdictional Assessing Officer, an evaluation and examination of their contents and an assessment of the potential impact that they would have on the total income for the six assessment years immediately preceding the assessment year pertaining to the year of search and the "relevant assessment year". It was only when the Assessing Officer of the assessees was satisfied that the materials coming into his possession were likely to "have a bearing on the determination of the total income" that notice under section 153C could be issued. Abatement would thus be a necessary corollary of that notice. The Department had erroneously proceeded on the assumption that the moment any material was recovered in the course of a search or on the basis of a requisition made, they were empowered in law to assess or reassess for all the six assessment years immediately preceding the assessment co relatable to the search year or the "relevant assessment year" as defined in Explanation 1 of section 153A. Such approach was unsustainable and contrary to the precedents. That the satisfaction notes of the jurisdictional Assessing Officers had failed to record any reasons as to how the material discovered and pertaining to a particular assessment year was likely to "have

a bearing on the determination of the total income" for the year which was sought to be abated or reopened in terms of the notices. The satisfaction notes established that the jurisdictional Assessing Officers had proceeded on the premise that the moment incriminating material was unearthed in respect of a particular assessment year, they had the jurisdiction and authority to invoke section 153C in respect of all the assessment years which could otherwise form part of the "relevant assessment year" as defined in section 153A. Such understanding of the provisions of section 153C was erroneous and unsustainable. The discovery of material likely to implicate the assessee and impact the assessment of total income for a particular assessment year was not intended to set off a chain reaction on all assessment years which could form part of the "relevant assessment year". This, more so since none of the satisfaction notes had recorded any reasons of how that material was likely to materially influence the computation of income for those assessment years. Therefore, the satisfaction notes would have to evidence a formation of opinion that the material is likely to be incriminating for more than a singular assessment year and warranting proceedings under section 153C for the assessment years in addition to those to which the material may be directly relatable. Hence, the notices issued for the assessment years 2013-14 to 2020-21 in all but the two petitions were quashed. Dismissing the petitions (W. P. (C) Nos. 3007 and 3019 of 2023), that the satisfaction notes in these petitions had alluded to incriminating material having been recovered for the assessment years 2013-14 and 2014-15, respectively, and the materials that were correlatable had been specifically identified. All other contentions of parties could be raised in the ongoing proceedings. (AY. 2013-14 to 2020-21)

Saksham Commodities Ltd. v. ITO (2024) 464 ITR 1/ 338 CTR 418 (Delhi) (HC)

S. 153C : Assessment – Income of any other person – Limitation – Composite satisfaction note sufficient if it records material gathered in search relevant to all AYs of block – Delay in initiation not fatal if proceedings commenced within reasonable period from completion of searched person's assessment – Writ petition dismissed. [S. 132, 153A, 153B, Art. 226] 2259

The assessee challenged notices under section 153C on grounds of delay, limitation, absence of year-wise incriminating material, and non-recording of separate satisfaction notes. The High Court held that a composite satisfaction note is valid if it embodies search material pertaining to the entire block; delay in initiation is not fatal so long as proceedings are within a reasonable period from closure of the searched person's assessment. Petitions filed belatedly could not justify interference under Art. 226. Issue of limitation left open for adjudication in assessment proceedings. (AY 2014-15 to 2016-17)

Indian National Congress v. DCIT [2024] 463 ITR 431 / 337 CTR 761 (Delhi)(HC)

S. 153C: Assessment-Income of any other person-Search and seizure-Satisfaction note-Served satisfaction note subsequent to notice under section 143(2)-Writ petition is dismissed. [S. 132 142(1), Art. 226] 2260

In response to notice under section 153C dt. 9-6-2022 the Assessee had filed return. Notice issued under section 142(1) dated 11-12-2023. Assessee filed writ petition on the ground that no satisfaction note was provided along with notice under section 153C.

Dismissing the petition the Court held that satisfaction note of Assessing Officer had been served upon assessee, subsequent to notice under section 142(1) dated 11-12-2023. Hence, the assessee should have raised all possible objections before Assessing Officer during course of assessment proceedings instead of filing writ petition. Circular No. 24 of 2015, dated 31-12-2015. (AY. 2014-15)
Shyamlal Rupchand Parwani v. ACIT (2024) 297 Taxman 581 / 337 CTR 850 (Guj.) (HC)

2261 **S. 153C: Assessment-Income of any other person-Search-Statement on which reliance has been placed for issuance of notice under section 153C shall be provided to the assesse-Order is set aside with the direction. [Art. 226]**
Where pursuant to search conducted in case of certain parties several incriminating materials were found and statements of two persons were recorded and based on same, a notice under section 153C was issued upon assessee, the entirety of such statements as recorded from two persons must be supplied to assessee. Relied on *T. Takano v. Securities and Exchange Board of India (2022) 232 Com Cas 136 (SC) / 2022 8 SCC 162 / Reliance Industries Ltd v. Securities and Exchange Board of India (2022) 234 Comp Cas 1(SC), (2022) 10 SCC 181, Kanwar Natwar Singh v. Director pf Enforcement, (2022) 232 Com Cas 126 (SC), (2022) 8 SCC 162*
Madurai Srinivasagam Sunther v. Dy. CIT [2024] 461 ITR 275 (Mad.) (HC)

2262 **S. 153C: Assessment-Income of any other person-Search-Difference-Conditions more stringent under section 153C-Appellate authority should make good the error committed by the assessing authority by ensuring that an effective opportunity of cross-examination was granted to the assessee prior to finalising the appeal proceedings-The powers of the appellate authority under sections 246 and 246A are co-terminus with those of the Assessing Officer. [S. 153A, 246,246A,Art. 226]**
There is a vital distinction between the object, intention as well as the express language of sections 153A and 153C. Section 153C requires the satisfaction of two conditions prior to issuance of notice, (i) recording of satisfaction by the Assessing Officer of the searched entities that some of the incriminating materials relate to a third party, and (ii) recording of satisfaction by the Assessing Officer of the third party that the incriminating materials have a bearing on the determination of the total income of that third party. Notice under section 153C would have to be issued only upon the concurrent satisfaction of both these conditions. The court made it clear that the appellate authority should make good the error committed by the assessing authority by ensuring that an effective opportunity of cross-examination was granted to the assessee prior to finalising the appeal proceedings. The powers of the appellate authority under sections 246 and 246A are co-terminus with those of the Assessing Officer and the direction would suffice to protect the interests of the assessees and to remedy the procedural error committed by the officer while framing the assessment.] (AY. 2009-10, 2011-12, 2012-13, 2013-14 to 2019-20)
Agni Vishnu Ventures Pvt. Ltd. v. Dy. CIT [2023] 157 taxmann.com 242 / (2024)460 ITR 438 /338 CTR 379 (Mad.)(HC)

S. 153C: Assessment-Income of any other person-Search and seizure-Satisfaction note without document identification no. (DIN)-When satisfaction notes were provided to assessee, said communication bore DIN-Notice and assessment order is valid. [Art. 226] 2263

Assessing Officer after recording satisfaction, issued notice under section 153C. Thereafter, assessment orders were passed. On writ, the assessee challenged the orders on ground that satisfaction notes supplied to assessee did not bear DIN. Dismissing the petition the Court held that satisfaction note was document prepared by Assessing Officer which was kept in file and unless demanded by assessee it was not required to be provided to assessee. Since when satisfaction notes were provided to assessee, said communication bore DIN. Hence, notices and assessment orders were not without jurisdiction. Circular No. 19/2019, dated 14-8-2019 (AY. 2015-16 to 2020-21)

South Coast Spices Exports (P.) Ltd. v. PCIT (2024) 296 Taxman 184 / 336 CTR 226/ 470 ITR 683 (Ker.) (HC)

S. 153C: Assessment-Income of any other person-Search-Block period-The period of the "relevant assessment year" is to be calculated, to the date of receipt of the books of accounts, documents or assets seized by the jurisdictional AO of the non-searched person-Block periods would have to be reckoned with reference to the date of search can neither be countenanced nor accepted-Precondition of Rs. 50 lakhs or more constitutes a sine qua non for initiating action for the extended ten-year block, the aforesaid satisfaction and the reasons in support thereof would have to borne out from the satisfaction note itself. [S. 68, 69C, 153A, 260A, Art. 226] 2264

The group of writ petitions and an Income Tax Appeal was filed before Delhi High Court, to assail the initiation of assessment proceedings pursuant to the provisions of Section 153C of the Act. Firstly, the petitioners questioned the identification and computation of the block of six Assessment Years immediately preceding the AY relevant to the previous year in which the search was conducted or requisition made and the enlarged period of ten years that could become subject to reopening or reassessment in cases emanating from a search, introduced by virtue of the amendments made by the Finance Act, 2017. The court held the First Proviso to Section 153C introduces a legal fiction on the basis of which the commencement date for computation of the six year or the ten-year block is deemed to be the date of receipt of books of accounts by the jurisdictional AO. The identification of the starting block for the purposes of computation of the six and the ten year period is governed by the First Proviso to Section 153C, which significantly shifts the reference point spoken of in Section 153A(1), while defining the point from which the period of the "relevant assessment year" is to be calculated, to the date of receipt of the books of accounts, documents or assets seized by the jurisdictional AO of the non-searched person. The shift of the relevant date in the case of a non-searched person being regulated by the First Proviso of Section 153C(1) is an issue which is no longer res integra and stands authoritatively settled by virtue of the decisions of this Court in *SSP Aviation Ltd v. Dy. CIT (2012) 346 ITR 177 (Delhi)(HC) and CIT v. RRJ Securities Ltd 2015 SCC OnlineDel 13085* as well as the decision of the Supreme Court in *CIT v. Jasjit Singh 2023 SCC Online SC1265*. The aforesaid legal position also stood reiterated by the Supreme Court in *ITO v. Vikram Sujitkumar Bhatia 2023 SCC Online SC 370*. The submission of the revenue, therefore,

that the block periods would have to be reckoned with reference to the date of search can neither be countenanced nor accepted. The reckoning of the six AYs would require one to firstly identify the FY in which the search was undertaken and which would lead to the ascertainment of the AY relevant to the previous year of search. The block of six AYs would consequently be those which immediately precede the AY relevant to the year of search. In the case of a search assessment undertaken in terms of Section 153C, the solitary distinction would be that the previous year of search would stand substituted by the date or the year in which the books of accounts or documents and assets seized are handed over to the jurisdictional AO as opposed to the year of search which constitutes the basis for an assessment under Section 153A. The second challenge was whether the limit of INR 50 lakhs which is spoken of must be satisfied in each of the "relevant assessment year" or could the prescriptions of clause (a) of the Fourth Proviso to Section 153A of the Act be said to be satisfied if that monetary precondition is met on a cumulative calculation of the total asset value pertaining to the years opened up for assessment or reassessment as the case may be. The court held that the precondition of Rs. 50 lakhs or more constitutes a sine qua non for initiating action for the extended ten-year block, the aforesaid satisfaction and the reasons in support thereof would have to borne out from the Satisfaction Note itself. We are also of the opinion that the precondition of Rs. 50 lakhs is not liable to be viewed as being the qualifying criteria for each "relevant assessment year" that may be thrown open and that the said condition would stand satisfied if the escaped income cumulatively or in the aggregate meets the minimum benchmark of Rs. 50 lakhs. (AY. 2010-11, 2011-12)
PCIT v. Ojjus Medicare Pvt. Ltd& Ors (2024)465 ITR 101/ 161 taxmann.com 160 (Delhi) (HC)

2265 **S. 153C: Assessment-Income of any other person-Search-Satisfaction note-Neither reference to the date of search nor description of the nature of documents seized-Assessment order is invalid-No incriminating material was found-Addition is deleted. [S. 132]**
Held that the satisfaction note makes no reference to the date of search and the assessment years and gives no description of the nature of the seized documents hence, said satisfaction note cannot be termed as a satisfaction note which could give power to the AO to assume jurisdiction under s. 153C. The Assessment order is invalid. No incriminating material was found addition is not justified. (AY. 2016-17)
ACIT v. Suntok Tea Co. (2024) 230 TTJ 681 / 241 DTR 204 / 38 NYPTTJ 836 (Guwahati) (Trib)

2266 **S. 153C: Assessment-Income of any other person-Search-Recording of satisfaction-The documents were transmitted to the AO of the assessee, based on which he had rightly initiated the proceeding under S. 153C-The law is amendment of S. 153C w. e. f. 1st Oct., 2014-Incriminating material is found-Assessment is valid-Payment made to tenant is not in respect of said plot-Full consideration is assessable as income. [S. 132]**
Held that only on recording of such satisfaction by the AO of the "searched person" and handing over of the assets/documents to the AO of the "other person", proceedings under s. 153C can be initiated by the AO of the "other person". Such satisfaction was

recorded by the AO of the "searched person" in this case and the documents were transmitted to the AO of the assessee, based on which he had rightly initiated the proceeding under S. 153C. Prior to the amendment of S. 153C, w. e. f 1st October, 2014, only the AO of the searched person was required to record the necessary satisfaction before handing over the seized documents. The AO of the other person was not required to record any satisfaction before initiating proceedings u/s 153C. Incriminating material was found in the course of search hence, the assessment is valid. As regards payment made to tenant is not in respect of said plot hence, the full consideration is assessable as income. (AY. 2004-05)
Satya Sankalp Villa (Ellisbridge) (P) Ltd. v. ITO (2024) 231 TTJ 678 / 38 NYPTTJ 833 (Ahd.) (Trib)

S. 153C: Assessment-Income of any other person-Search-Incriminating material is not pertaining to the relevant assessment. 2267
Dismissing the appeal of the Revenue the Tribunal held that there was no incriminating material found during search qua the assessment year in question and the additions, based on estimation of suppressed sales, was made with respect to seized documents pertaining to assessment years 2016-17 and 2017-18. Order of CIT(A) deleting the addition is affirmed. (AY. 2013-14 to 2015-16)
Dy. CIT v. Kohli Tent House (2024)116 ITR 46 (SN)(Delhi)(Trib)

S. 153C: Assessment-Income of any other person-Search-Limitation-Period to be reckoned from date of receipt of books of account, documents or seizure of assets by Jurisdictional Assessing Officer of non-searched person-Commissioner (Appeals) considering limitation period from date of search-Notice is barred by limitation. [S. 132, 132A] 2268
Held, that the Commissioner (Appeals) had counted the limitation period from the date of search. The case was centralised on September 13, 2021, the satisfaction note was recorded by the Assessing Officer a week later and the notice under section 153C was issued a day after. All these dates fell in the previous year 2021-22 relevant to the assessment year 2022-23. The preceding ten assessment years would be 2012-13 to 2021-22. The assessment years under consideration, viz., 2009-10 and 2011-12 were beyond the period of ten years from the date of recording of the satisfaction note and, hence, barred by limitation. (AY. 2009 10, 2011-12)
Sarangabani Kirubakaran v. Dy. CIT (2024) 115 ITR 28 (SN) (Chennai)(Trib)

S. 153C: Assessment-Income of any other person-Search-Satisfaction-Note prepared by Assessing Officer of Assessee-Jurisdiction wrongly invoked-Assessment order is quashed. [S. 132, 153A] 2269
Held, that no satisfaction note was recorded by the Assessing Officer of the person in respect of whom the search was conducted before handing over the documents to the Assessing Officer of the assessee. The satisfaction note was prepared by the Assessing Officer of the assessee. As the jurisdiction under section 153C read with section 153A had been wrongly invoked by the Assessing Officer, the assessment order is quashed. (AY. 2013-14, 2014-15)
Bhushan Finance P. Ltd. v. Dy CIT (2024)114 ITR 51 (SN)(Delhi)(Trib)

2270 **S. 153C: Assessment-Income of any other person-Search-Six assessment years to be reckoned from date of recording satisfaction-Satisfaction recorded on 23-11-2010-Assessment Year2004-05 is beyond six assessment years-Order is bad in law. [S. 132]**

Held that the date of search would become the date of recording satisfaction, i. e., November 23, 2010. The assessment year 2004-05, the assessment order is without jurisdiction. (AY. 2004-05, 2005-06)

Esha Securities P. Ltd. v. Dy. CIT (2024)114 ITR 24 (SN)(Delhi)(Trib)

2271 **S. 153C: Assessment-Income of any other person-Search-Cash credits-Share premium-Identity and credit worthiness not established-Order of CIT(A) is affirmed. [S. 68, 153A]**

Held that the assessee had received share premium from various entities for assessment year 2009-10 but failed to establish either the identity and creditworthiness of the share applicants or the genuineness of the transactions. Therefore, there was no reason to interfere with the findings of the Commissioner (Appeals). Tribunal also held that the assessee was only a paper company and substantive addition had already been made in the hands, therefore, the protective addition made in the hands of the assessee is deleted. Estimation of commission is affirmed. (AY. 2009-10, 2013-14)

Surya Vincom P. Ltd. v. ACIT (2024)114 ITR 49 (SN)(Delhi)(Trib)

2272 **S. 153C: Assessment-Income of any other person-Search-Limitation-From date of handing over of books of account and other documents by Assessing Officer of person searched to Assessing Officer of third person-Limitation will start on date of recording of satisfaction note by Assessing Officer of person searched that incriminating material referred to third person-Assessing Officer of person searched also having jurisdiction over third person-Assessment year falling beyond stipulated six assessment years and four relevant assessment Years-Barred by limitation. [S. 132, 153A(1)]**

Held that the Assessing Officer of the searched person had recorded a satisfaction note for proceeding under section 153C with reference to the books of account seized during the course of search. The Assessing Officer of the other person had also recorded a satisfaction note for initiation of proceedings under section 153C on the same date, on being satisfied that the documents seized during search had information relating to the assessee's total income. Taking into consideration the date of handing over of the books of account and documents as the date of recording of the satisfaction by the Assessing Officer of the searched person and the Assessing Officer of the assessee, the subject assessment year fell beyond the stipulated six assessment years and four relevant assessment years because the date of satisfaction note recorded by the Assessing Officer fell in the assessment year 2022-23 and the 10 preceding assessment years immediately preceding the assessment year of the search, were up to 2012-13. Hence, the notice issued under section 153C for initiation of proceedings against the assessee for the assessment year 2010-11 and consequent assessment order passed under section 143(3) read with section 153C were barred by limitation, void ab initio and liable to be quashed. That the law did not make any distinction in case the Assessing Officer of the searched person and the Assessing Officer of the other person were one and

the same. The proviso to section 153C(1) was very clear that in the case of such other person, the reference to the date of initiation of search under section 132 in the second proviso to section 153A(1) shall be construed as referring to the date of receipt of the books of account, documents, etc., by the Assessing Officer having jurisdiction over such other person. Since, the Assessing Officer of the searched person could not hand over the books of account and other documents to the Assessing Officer having jurisdiction over the other person unless he recorded the satisfaction for proceeding under section 153C, the subject assessment year of the date of receipt of books of account and other documents by the Assessing Officer having jurisdiction over such other person fell beyond the stipulated six assessment years and relevant four assessment years and, thus, the notice issued by the Assessing Officer under section 153C and consequent assessment order passed under section 143(3) read with section 153C were barred by limitation and liable to be quashed. (AY. 2010-11)

KSJ Infrastructure P. Ltd. v. Dy. CIT (2024)113 ITR 433 /229 TTJ 609/238 DTR 257 (Chennai)(Trib)

S. 153C: Assessment-Income of any other person-Search-Pendency of proceedings-Company's name struck off from Register Of Companies-Assessing Officer had knowledge of name struck off-Order passed in name of non-existent company is not sustainable-Entire proceedings is quashed. [S. 153A] 2273

Held that in spite of that, the Assessing Officer had proceeded with the assessment proceedings in the case of the assessee and finalised the assessment under section 153C by order dated December 26, 2018. The order in the case of the assessee is not sustainable in the eyes of law since the company was not in existence at that material point of time at all. The assessment proceedings were not maintainable as the assessment order suffered from jurisdictional error. The order having admittedly being issued in the name of a non-existent company the entire proceedings were vitiated and the entire assessment proceedings initiated against the assessee were quashed. (AY. 2012-13 to 2014-15)

Dy. CIT v. KCJ Buildtech P. Ltd. (2024)112 ITR 36 (SN) (Delhi)(Trib)

S. 153C: Assessment-Income of any other person-Search-Time limit for initiation of proceedings-Legal grounds-Notice was issued on 11-1-2016-Six years for which proceeding under section 153C could have been initiated were assessment years 2015-16 to 2010-11-Assessing Officer had no jurisdiction to initiate proceeding under section 153C for assessment year 2008-09-Lack of jurisdiction-Assessment order is quashed. [S. 132, 254(1), ITAT, Rule,27] 2274

A search was carried out in Sural Ltd. group premises on 18-12-2013. Certain incriminating documents belonging to assessee were found during course of search proceeding. Assessing Officer initiated proceeding under section 153C against assessee for assessment year 2008-09 by issuing notice under section 153C on 11-1-2016. CIT(A) deleted the addition on merits. The asssesse raised jurisdiction issue under Rule 27 of the ITAT Rules. Tribunal admitted the legal ground and held that for proceedings under section 153C, year of search was to be substituted by year of receipt of books/documents by Assessing Officer of other person and thereafter period of six years had to be counted

backwards from that year. Since notice under section 153C was issued on 11-1-2016, it prima facie transpired that six years for which proceeding under section 153C could have been initiated were assessment years 2015-16 to 2010-11 only. Therefore, Assessing Officer had no jurisdiction to initiate proceeding under section 153C for assessment year 2008-09. Accordingly, the assessment order is quashed. (AY. 2008-09)
DCIT v. Suraj Ltd. (2024) 208 ITD 452/231 TTJ 822/242 DTR 137 (Ahd.) (Trib.)

2275 **S. 153C: Assessment-Income of any other person-Search-Unabated assessment-No incriminating material found during search-Addition based on loose sheets is unsustainable. [S. 132, 132(4), 153A]**
Held that the loose sheets recovered in a search action carried out under section 132 of the Act in the case of Kasera group, and relied upon by the Revenue, were brought by the search party with them. No incriminating material whatsoever was found during the course of search action in the case of the assessee. The alleged incriminating material found in the case of a past search action in the case of third party, i. e., Kasera group was not acted upon and no proceedings under section 153C were initiated or contemplated. Thus, the Assessing Officer could not make such dead material the basis in the subsequent assessment proceedings carried out in the case of the assessee under section 153A to make additions, when the limitation to proceed under section 153C on the basis of the loose sheets or incriminating material had already expired in terms of the provisions of section 153B. Therefore, according to the provisions of section 132 read with the provisions of section 153B, the search party had exceeded its jurisdiction in recording statement of the assessee under section 132(4), and by bringing the documents from its record and thereby confronting the assessee in respect of the document during the recording of the statement would not infuse life in such dead documents. That neither any assessment proceedings under section 153C of the Act were initiated nor pending on the date of search. No other assessment proceedings were initiated, or pending on the date of search. Therefore, no assessment stood abated on the date of the search. Since, no assessment stood abated, the assessment year under consideration would fall within the scope of unabated assessment year. Therefore, the Assessing Officer was not justified to make the additions in the absence of any incriminating material found during the course of the search. (AY. 2018-19, 2019-20)
Ravi Badalia v. Dy. CIT (2024) 110 ITR 329 / 228 TTJ 291 (Kol.) (Trib)

2276 **S. 153C: Assessment-Income of any other person-Search-No incriminating material is found-Addition is not valid [S. 132, 153A]**
The Hon'ble Tribunal held that the additions under Section 153A cannot be made in an unabated assessment year without incriminating material found during the search of the assessee. Further that the documents used for making additions were seized from third parties and not from the premises of the assessee. Moreover, the proper legal recourse for using documents seized from third parties was to proceed under Section 153C. The Hon'ble Tribunal relied on the Supreme Court's decision in *PCIT v. Abhisar Buildwell Pvt. Ltd. (2023) 454 ITR 212 / 149 taxmann.com 399(SC)* to ratify that no addition could have been made in an unabated assessment year without incriminating material found during the search. (AY. 2012-13)
Krishna Murari Choudhary v. ACIT, (2024) 111 ITR 262 (Ranchi)(Trib.)

S. 153C: Assessment-Income of any other person-Search-Satisfaction note-Date of satisfaction note is to be reckoned as date of handing over of materials for purpose of assumption of jurisdiction-Time limit of calculating six years was to be calculated from this date-Assessment year 2008-09 is time barred-No incriminating documents-Addition is deleted. [S. 68, 132] 2277

The ITAT observed that the date of handing over of the materials was not mentioned in the satisfaction note and, therefore, in the absence thereof the date of satisfaction note shall be reckoned as the date of handing over of the materials, and consequently, the time limit of calculating the six years has to be calculated from this date i. e. 02. 02. 2016 in the present. Therefore, in the present case, AY 2008-09 was held to be beyond the period of six AYs i. e. time barred. With respect to addition u/s 68 in the absence of any seized incriminating documents/materials in the assessment completed u/s 153C r. w. s. 153A, the ITAT held that in respect of completed or unabated assessment no addition can be made by the AO in the absence of any incriminating material having been found during the course of search u/s 132 or requisition u/s 132A. (AY 2008-09 and 2013-14)

CIT (Asst.) v. Enpro Telecom P. Ltd. (2024) 111 ITR 400 (Delhi)(Trib.)

S. 153C: Assessment-Income of any other person-search conducted prior to 1-4-2017, as per existing statutory provisions, date of search had to be reckoned from date of recording of satisfaction for purpose of section 153C. [S. 69A, 132(4)] 2278

Search and Seizure action in case of Sh. Mohit Goel was on 23-12-2016. The Assessing Officer recorded the satisfaction on 24-9-2018. Held that amendment to section 153C by Finance Act, 2017 is applicable only to search and seizure operation conducted after 1-4-2017 and not prior to it. Where search and seizure operation was conducted prior to 1-4-2017, as per existing statutory provisions, date of search had to be reckoned from date of recording of satisfaction for purpose of section 153C. In absence of any satisfaction, Assessing Officer could not have proceeded to frame assessment under section 153C of the Act. (AY. 2017-18)

D. L. Heera Bhai Jewellery Arcade (P.) Ltd. v. ACIT (2024) 207 ITD 1 /229 TTJ 1/236 DTR 233(TM) (Delhi) (Trib.)

S. 153C: Assessment-Income of any other person-Search-On money-Six assessment years-Date of search-Date of receipt of seized material-Relevant assessment year-Search was conducted prior to the Finance Act, 2017-Search was conducted before the Finance Act, 2017, power to assess block period of ten years could not be attracted in case of a search which had taken place prior to 1-4-2017-Satisfaction note for the assessee being a non-searched party in AY. 2018-19-Order passed is beyond permissible period of six years-Assessment order for the Assessment year 2011-12 is quashed. [S. 69A, 132, 153A] 2279

Search and seizure action on Sarthav Infra Pvt. Ltd. was conducted on December 04, 2014. The information was received by the Assessing Officer on March 16, 2018, i. e AY. 2018 19). The notice under section 153C was issued on April 04, 2018. Therefore, six years prior to AY. 2018-19 would be the period between AY. 2012-13 to 2017-18. Accordingly, AY. 2018-19 falls beyond the period of six years and hence, the proceedings

are time barred. On appeal the CIT(A) held that the date of information received was 31-3-2018 is to be considered. The AY. 2011-12 is beyond the period of six assessment years but within period of 10 years from the AY. In which the documents pertaining to the appellant have been received. Accordingly, the ground of limitation was dismissed. On appeal, the Tribunal held that the AO had no jurisdiction to initiate proceeding under section 153C of the Act for the AY. 2011-12. Search was conducted before the amendment and also satisfaction note for the assessee being a non-searched party in AY. 2018-19, search was conducted before the Finance Act, 2017. Power to assess block period of ten years could not be attracted in case of a search which had taken place prior to 1-4-2017. Accordingly, the order passed under section 153C r. w. s 143 (3) of the Act was beyond the permissiblelimit of six years. (ITA No. 4024 /Mum/ 2024 / 4512 / Mum/ 2024 dt 20-12-2024. Followed PCIT v. Karina Air Lines International Ltd (ITA No. 690/ 2023 dated 2-8-2024) (2024) 165 Taxmann.com 421 (Delhi)(HC) (AY. 2011-12)
Rupesh Kantilal Savla v. ACIT(2010) 210 ITD 591 (Mum)(Trib)

2280 **S. 153C: Assessment-Income of any other person-Search-Additional ground-Document Identification Number-Unexplained money-Assessment order neither contained any Document Identification Number nor any reason for non-mentioning thereof, assessment order-Violation of Circular No. 19/2019, dated 14-8-2019-Order is quashed. [S. 69A, 143(3)]**

Assessing Officer passed assessment order under section 153C read with section 143(3) on assessee and made addition to his income treating certain amount as unexplained money under section 69A. Addition was affirmed by the CIT(A). On appeal the assessee raised additional ground that the Assessment order neither contained any Document Identification Number nor any reason for non-mentioning. Thereof, assessment order is bad in law. Tribunal held that since assessment order neither contained any Document Identification Number (DIN) nor any reason for non-mentioning thereof and subsequent communication issued by Assessing Officer generating DIN for assessment order could not make good deficiency in assessment order issued without generating DIN, assessment order in question was in violation of Circular No. 19/2019, dated 14-8-2019 quashed. (AY. 2015-16)
Pratap Singh Yadav. v. DCIT (2024) 204 ITD 511 (Delhi) (Trib.)

2281 **S. 153C: Assessment-Income of any other person-Search-Cash found in the premises-Cash kept for safe custody-No evidence produced to substantiate the claim-Addition is affirmed.**

Held that the assessee failed to produce the evidence that cash found was money realized on sale of livestock (cows) and grapes by his HUF and that the same was kept with PNG for safe custody. Addition is affirmed. (AY. 2020-21)
Bhushan Ravindra Dandavate v. Dy. CIT (2024) 227 TTJ 1005 / 234 DTR 125 (Pune)(Trib)

S. 153C: Assessment-Income of any other person-Search-Not mention of Document Identification No (DIN) in the assessment order-Subsequent separate communication of DIN is a superfluous exercise-Order invalid hence, quashed-Circular No. 19 of 2019, dt. 14th Aug., 2019. [S. 119, 292B] 2282

In an appeal the assessee has raised additional ground as regards the passing of order without making reference to DIN in the assessment Order. Tribunal admitted the additional ground and held that Circular No. 19 of 2019, dt. 14th Aug., 2019 makes it clear that the object behind bringing the circular is for creating an audit trail. In para 2, it has been very clearly mentioned that no communication is to be issued by any income tax authorities relating to assessment, appeals, orders, statutory or otherwise, exemptions, enquiry, investigation, verification of information, penalty, prosecution, rectification, approval, etc. to the assessee or any other person, on or after the 1st day of October, 2019, unless a computer generated DIN has been allotted and is duly quoted in the body of such communication. Paragraph 3 of the circular carves out certain exceptions to para 2 by providing that under certain exceptional circumstances, the communication may be issued manually but only after recording reasons in writing not only in the file and with prior written approval of the Chief CIT/Director General of IT, but the communication issued manually in such circumstances must also state the reasons as to why the communication is issued manually without a DIN and must also mention the date and number of written approval of the Chief CIT/Director General of IT for issuing manual communication. In fact, in para 3 of the aforesaid circular, the format for recording such reasons has been specified. Para 4 of the circular makes it clear that any communication issued which is not in conformity with para 2 and para 3 shall be treated as invalid and shall be deemed to have never been issued. It is fairly well settled that a circular issued under s. 119 has statutory force and binding on subordinate authorities working under the CBDT. Accordingly, the order passed without mentioning of DIN in the order is bad in law. Subsequent separate communication of DIN is a superfluous exercise. (AY. 2012-13 to 2014-15)

Dy. CIT v. Gajendra Singh (2024) 227 TTJ 690 / 237 DTR 122 (Delhi)(Trib)

S. 153D: Assessment-Search-Approval-Approval is granted without application of mind-Assessment order is quashed-SLP dismissed. [S. 292B, Art. 136] 2283

Where the Tribunal set aside the additions made qua the income of the assessee, inter alia, on the ground that there was no application of mind by the Additional Commissioner in granting approval under section 153D of the Income-tax Act, 1961, and the High Court, on the Department's appeal, held that having regard to the findings returned by the Tribunal, which were findings of fact, no substantial question of law arose for consideration, and that this was not an exercise dealing with a matter which could be corrected by recourse to section 292B of the Act on a petition for special leave to appeal to the Supreme Court. The Supreme Court refused to interfere, having regard to the peculiar facts of the cases. (AY. 2017-18)

PCIT v. Anuj Bansal (2024)466 ITR 254/165 taxmann.com 3 (SC)

Editorial: PCIT v. Anuj Bansal (2024) 466 ITR 251 (Delhi) (HC)

2284 **S. 153D: Assessment-Search-Approval-Mechanical approval-ACIT granted approval without noticing discrepancy in assessment order or search material-Mechanical approval without application of mind would be invalid in eyes of law. [S. 132,153A Art. 136]**

On the basis of a search conducted at assessee's premises Assessing Officer made significant additions to assessee's income for cash deposits and cash introduced through an entry operator. Assessing Officer incorrectly recorded returned income, leading to an erroneous total assessed income. ACIT approved assessment under Section 153D without reviewing assessment records or search material, missing key discrepancies. On appeal, Tribunal set aside assessment order on ground that ACIT's approval was based only on draft assessment order and failed to review assessment records and search material. High Court upheld Tribunal's finding. SLP of Revenue is dismissed. (AY. 2013-14)

PCIT v. Anju Bansal (2024) 300 taxman 184/ 466 ITR 254 (SC)

Editorial: PCIT v. Anju Bansal (2024) 165 taxmann.com 2 /466 ITR 251 (Delhi)(HC)

2285 **S. 153D: Assessment-Search-Approval-Order passed without obtaining the prior approval is bad in law-SLP of Revenue is dismissed. [S. 132,153A, 153B, Art. 136]**

Held that the assessment orders were silent about Assessing Officer having written to Additional Commissioner seeking his approval or of Additional Commissioner having granted such approval, Tribunal was correct in holding that in present cases such approval was granted mechanically without application of mind by Additional Commissioner resulting in vitiating assessment orders. Order of Tribunal was affirmed by High Court. SLP of Revenue is dismissed. (AY. 2003-04, 2009-10)

Asst CIT v. Serajuddin and Co. (2024)463 ITR 698/299 Taxman 448 (SC)

Editorial: ACIT v. Serajuddin & Co. (2023) 454 ITR 312 / 292 Taxman 566 / 226 DTR 91 / 333 CTR 228 (Orissa)(HC)

2286 **S. 153D: Assessment-Search-Approval-Sanction must be accorded only after due consideration. [S. 260A, 292B]**

Dismissing the appeal the Court held that having regard to the findings returned by the Tribunal, which were findings of fact, no substantial question of law arose for consideration. The Tribunal was right that there was absence of application of mind by the Additional Commissioner in granting approval under section 153D of the Income-tax Act, 1961. It was not an exercise dealing with an immaterial matter which could be corrected by recourse to section 292B of the Act. The order of assessment under section 153A read with section 143(3) was not valid. (AY. 2017-18)

PCIT v. Anuj Bansal (2024)466 ITR 251/165 taxmann.com 2 (Delhi)(HC)

Editorial: SLP of Revenue is dismissed, PCIT v. Anuj Bansal (2024)466 ITR 254/165 taxmann.com 3 (SC)

S. 153D : Assessment-Search-Approval-Mechanical approval-ACIT granted approval without noticing discrepancy in assessment order or search material-Mechanical approval without application of mind would be invalid in eyes of law-No substantial question. of law. [S. 132, 153A, 260A] 2287

On the basis of a search conducted at assessee's premises Assessing Officer made significant additions to assessee's income for cash deposits and cash introduced through an entry operator. Assessing Officer incorrectly recorded returned income, leading to an erroneous total assessed income. ACIT approved assessment under Section 153D without reviewing assessment records or search material, missing key discrepancies. On appeal, Tribunal set aside assessment order on ground that ACIT's approval was based only on draft assessment order and failed to review assessment records and search material. High Court upheld Tribunal's finding. No substantial question of law. (AY. 2013-14)

PCIT v. Anju Bansal (2024) 165 taxmann.com 2 /466 ITR 251 (Delhi) (HC)

Editorial: SLP of Revenue is dismissed, PCIT v. Anju Bansal (2024) 300 taxman 184/ 466 ITR 254 (SC)

S. 153D: Assessment-Search and seizure-Approval-Approval cannot be merely a ritualistic formality or rubber stamping by authority, rather it must reflect an appropriate application of mind-Approval was granted by Addl. Commissioner for 43 cases on a single day-Order is quashed by the Tribunal-High Court affirmed the order of Tribunal. [S. 127, 132, 133A, 260A] 2288

During search and seizure operation conducted upon assessee, Assessing Officer passed an order under section 127 leading to centralization of case of assessee followed by issuance of notice under section 153A. Pursuant to same, Assessing Officer passed a scrutiny assessment order under section 153A read with section 143(3) making certain additions. On appeal the Tribunal held that since order of approval under section 153D for relevant assessment year was granted by Addl. Commissioner for 43 cases on a single day without perusing draft assessment orders at all and without an independent application of mind, assessment order was rightly declared to be illegal by Tribunal. Affirming the order of the Tribunal the Court held that grant of approval under section 153D cannot be merely a ritualistic formality or rubber stamping by authority, rather it must reflect an appropriate application of mind. (AY. 2015-16)

PCIT v. Shiv Kumar Nayyar (2024) 299 Taxman 385 / 467 ITR 186 (Delhi) (HC)

S. 153D: Assessment-Search-Approval--A common and consolidated approval has been granted-Approval is bad in law-Order is quashed. [S. 153A] 2289

Held that approval granted should reflect due application of mind, and if the same is subjected to judicial scrutiny, it should stand for itself and should be self-defending. Consolidated approval is non-application of mind hence the assessment orders are non-est and nullity and hence, the same are quashed. (AY. 2016-17, 2017-18)

Veena Singh v. ACIT (2024) 229 TTJ 898 / 238 DTR 294 (Delhi) (Trib)

2290 **S. 153D: Assessment-Search-Approval-Recording of satisfaction-Satisfaction note does not specify the seized material-Non application of mind-Assessment order is bad in law. [S. 132, 153C]**

Held that the satisfaction drawn by the AO there is no reference to any other material. Satisfaction note is mandatory. On the facts the satisfaction note is without application of mind. The assessment order is bad in law. (AY. 2008-09 to 2010-11)

K. K. Leissure Tourism International (P) Ltd. v. DCIT (2024) 228 TTJ 502 / 235 DTR 241 / 38 NYPTTJ 207 (Cochin)(Trib)

2291 **S. 153D: Assessment-Search-Approval–38 cases-Mechanical Approval-Approval letter not mentioning of approval-Additional ground-Admitted-Assessment order is quashed. [S. 132, 153C, 254(1)]**

Additional ground on approval is admitted. The Tribunal held that the approval letter under section 153D of the Act which was issued in respect of thirty-eight cases and did not even mention that approval had been granted. Granting of mechanical approval vitiates the entire proceedings. Accordingly, the order is quashed (AY. 2013-14, 2016-17)

Subodh Agarwal v. Dy. CIT (2024)116 ITR 496 (Lucknow)(Trib)

2292 **S. 153D: Assessment-Search-Approval-Approval of Joint commissioner –Mechanical approval-Final assessment on same day-Assessment order is annulled. [S. 132]**

Held that the legislative intent of section 153D, inserted by the Finance Act, 2007 with effect from June 1, 2007, was that the order of assessment or reassessment of search cases should be passed only with the prior approval of the superior authority. However, the Joint Commissioner had granted approval in a hasty manner, without even going through the records. The entire exercise of seeking and granting of approval was completed in a single day, making it apparent that the Joint Commissioner did not have adequate time to apply his mind to the seized material, which formed the basis for the draft assessment order passed by the Assessing Officer. The Department could not demonstrate, by cogent evidence, that the Joint Commissioner had adequate time with him so as to grant approval after duly examining the material prior to approving the assessment order. The Central Board of Direct Taxes Circular No. 3 of 2008, dated March 12, 2008 (2008) 299 ITR 8 (St), made it evident that the Legislature made it compulsory that the assessments of search cases should be made with the prior approval of the superior authority. (AY. 2015-16, 2017-18)

Quality Structures P. Ltd. v. Dy. CIT (2024) 115 ITR 49 (SN) (Lucknow)(Trib)

2293 **S. 153D: Assessment-Search-Approval granted by Joint Commissioner of Income-tax in the case of 49 assessees on the same date on which draft assessment order was passed by the AO-Non application of mind-Assessment order is invalid-CBDT Circular no. 3 of 2008 dated 12. 3. 2008. [S. 132, 153A]**

On 2.5.2013, a search was conducted at the premises of different members/associates of Mantri-Soni Group of Jalna /Bhilwara and the assessee was one of the entities covered under search. The AO issued notice u/s. 153A of the Act to the assessee on 13.02.2014 and in response thereto the assessee filed its letter on 20.03.2014 requesting to treat return filed earlier on 28. 09. 2019 declaring income of Rs. 38,94,890/- be treated as

return filed u/s 153A. The assessment was completed on 30.03.2016 by making addition in respect of share capital/premium, unsecured loans as accommodation entries. The CIT (A) confirmed the order passed by the AO. On further appeal, the assessee challenged the validity of the assessments arguing that approval granted by the Joint Commissioner u/s 153D of the Act was technical, procedural and without application of mind. The approval was granted without mentioning any reason or justification for making additions. It was pointed out that the AO had sent orders for various entities for approval on 18.03.2019. The following days- 19.03.2019, 20.03.2019- were Saturday, Sunday and the approval was granted on 21.03.2019 within which it was not possible to look into all facts and details of search proceedings. The DR argued that process of assessment was under continuous supervision and guidance of Joint Commissioner of Income-tax, he had applied his mind to seized material and appraisal report during assessment proceedings. Therefore, the allegation of the assessee that the approval was granted in four days without application of mind is baseless while approving draft order under section 153D and the perception and observation of authorised representative become infructuous.

After considering rival submissions and case laws referred, the Tribunal held that section 153D is a mandatory requirement and such approval is not meant to be given mechanically. Such approval granted mechanically without application of mind by the Additional Commissioner of Income-tax results in vitiating the assessment orders. Taking into account the sequence of events, the Tribunal held that the approving authority granted approval in one day mechanically without examining the relevant material. The Tribunal noted that admittedly, the Assessing Officer sought approval under section 153D of the Act in 49 assessment orders vide letter dated 18.03.2016 which was placed on record by the learned Departmental Representative on 9.10.2023. The approving authority had to examine number of evidence, documents, statements of various persons, etc., recorded which were necessarily to be taken into consideration while granting approval under section 153D of the Act by the Joint Commissioner of Income-tax. On an examination of the approval dated 21.03.2016 which was on record placed by the learned DR, the Tribunal did not find such indication of examination of evidence, documents, statements of various persons, etc., at least, no reference whatsoever made by the Joint Commissioner of Income-tax, i. e., approving authority. Hence, Tribunal held that the approval granted mechanically vitiates the assessments and accordingly, quashed the assessment orders. (AY. 2009-10 to 2014-15)

SMW Ispat P. Ltd. v. Asst. CIT (2024) 112 ITR 224 (Pune)(Trib.)

Dy. CIT v. Sangam Infratech P. Ltd (2024) 112 ITR 224 (Pune)(Trib.)

S. 153D: Assessment-Search-Approval-Document Identification Number (DIN)- Additional Commissioner to draft assessment order was without issuance of DIN, final assessment order passed under section 153A on basis of such invalid and non-est approval under section 153D was without sanction of law and was to be quashed. [S. 153A] 2294

Held that every income tax authority shall allot a new computer-generated Document Identification Number (DIN) in respect of every communication by way of notice, order, letter or any correspondence issued by him to any other income tax authority

or assessee or any other person and such number should be quoted thereon. Any such order, notice, correspondence etc. which does not bear DIN in body of communication shall be treated as invalid in eyes of law and shall be deemed to have never been received. Where approval granted under section 153D by Additional Commissioner to draft assessment order was without issuance of DIN, final assessment order so passed under section 153A on basis of such invalid and non-est approval under section 153D is without sanction of law and invalid. (AY. 2017-18)
Finesse International Design (P.) Ltd. v. DCIT (2024) 204 ITD 594 /227 TTJ 501 (Delhi) (Trib.)

2295 **S. 154: Rectification of mistake-Mistake apparent from the record-Refund-Excess levy of surcharge-Strictures-Statutory remedy-Technological impediment cannot be a reason for harassing an assessee year after year and therefore, Income Tax Department should take steps to upgrade software instead of blaming technology for erroneous calculation of surcharge-Immediate steps must be taken by Revenue to upgrade software or take such other steps as might be necessary to ensure that such mistake did not occur in future-Central Board for Direct Taxes should also take necessary steps for rectifying software as issue might not be resolved by Jurisdictional Assessing Officer. [S. 143(1)(a), 156, 220, 237, 240, Art. 132, 226]**
Assessee filed a writ petition challenging imposition of an excess surcharge and demand for Assessment Year 2022-23. High Court held that since assessee had a statutory alternative remedy, there was no justification to entertain the writ petition. On SLP the Court held that for Assessment Year 2021-22, a similar surcharge issue was addressed, and High Court allowed writ petition with Revenue agreeing to remit amount. Similarly, in current Assessment Year 2022-23 excess surcharge was also rectified, and amount was remitted. However, during pendency of present proceedings, another demand notice was raised for Assessment Year 2023-24, with a surcharge computed at 37%. Revenue submitted that error occurred as CPC had not adopted a mechanism to delete excess calculations. Court held that technological impediment cannot be a reason for harassing an assessee year after year and therefore, immediate steps must be taken by Revenue to upgrade software or take such other steps as might be necessary to ensure that such mistake did not occur in future. For impugned assessment year dispute had already been resolved and amount was said to have been remitted. However, for assessment Year 2023-24, revenue should take immediate steps and communicate order of withdrawal of excess surcharge amount within six weeks from date of receipt of order and Central Board for Direct Taxes should also take necessary steps for rectifying software as issue might not be resolved by Jurisdictional Assessing Officer. (AY. 2022-23, 2023-24)
Sunil Bakht v. ADIT (2024) 340 CTR 937 / 242 DTR 235 / 167 Taxmann.com 267/301 Taxman 232 (SC)
Editorial: From the Judgement of Delhi High Court in WP No. 2943 of 2024 dt. 28th Feb, 2024.

S. 154: Rectification of mistake-Mistake apparent from the record-Refund of tax deduction at source-Central Board of Direct Taxes-Instructions-Application was filed after 12 years from assessment year-High Court dismissed as barred by limitation-SLP dismissed as withdrawn with the liberty to make an application before CBDT. [S. 119, Art. 136] 2296

Assessing Officer did not entertain application on ground that it had been filed beyond period of limitation. He also rejected assessee's application seeking condonation of delay stating that as per clause 3 of Circular No. 9/2015, dated 9-6-2015 no condonation application for claim of refund/loss shall be entertained beyond six years from end of assessment year for which such application/claim was made. High Court held that by resorting to clause 3 of Circular No. 9/2015, dated 9-6-2015 assessee could have sought condonation of delay in moving rectification application by another two years, however, since it did not move rectification application either within period of limitation or within period for which delay could be condoned, i. e., up to six years, rectification application filed by assessee after over 12 years was barred by law of limitation. On SLP, assessee submitted that permission may be granted to withdraw this SLP with liberty to make a representation to CBDT under section 119 so as to seek adjustment in view of rectification made by Department with regard to PAN number of assessee. Accordingly, the SLP filed by assessee is dismissed as withdrawn, reserving aforesaid liberty to assessee to approach CBDT. (AY. 2008-09)

Gee Cee Metals (P.) Ltd. (AOP) v. PCIT (2024) 297 Taxman 67 (SC)

Editorial: Gee Cee Metals (P.) Ltd. (AOP) v. PCIT (2023) 152 taxmann.com 331/445 ITR 211 (Uttarakhand)(HC)

S. 154: Rectification of mistake-Mistake apparent from the record-Subsequent decision of Supreme Court-Order must be rectified-Order of AAR which was overruled by Supreme Court-Circular No 688 dated 17-11 1971(1972) 83 ITR 6 (St) [Art. 226] 2297

On the basis of the order passed by Authority for Advance Rulings that payment received by assessee from its Indian distributor for sale of software product in India was royalty, assessee filed its returns and paid taxes under protest. Order of AAR had been challenged by assessee before Apex Court and it was expressly overruled. Subsequent to order of Apex Court, assessee filed rectification application and sought for refund of taxes by invoking section 154 but lower authorities rejected assessee's rectification application on premise that section 154 was not applicable to facts of the case. On writ the Court held that as per circular No. 68, dated 17-11-1971, an assessee is entitled to seek rectification pursuant to interpretation of law by Apex Court, taxes paid by assessee under protest deserved to be refunded by rectifying income-tax returns filed by assessee. Order is set aside and rectification is allowed. (AY. 2017-18 to 2019-20)

Citrix Systems Asia Pacific Proprietary Ltd. v. Dy. CIT(IT)(2024) 471 ITR 452/160 taxmann.com 625 (Karn.) (HC)

2298 **S. 154: Rectification of mistake-Mistake apparent from the record-Book profit-Surrender of income-Surrendered income is not included in the book profit-Not a patent error-Rectification is not justified. [S. 115JB, 133A]**

Assessing Officer passed an order under section 154 and added surrendered amount in book profit. Tribunal held that amount included in book profit of assessee on basis of voluntary disclosure made during course of survey under section 133A, was not supported by any incriminating material found during course of survey, and therefore, it could not have been considered as a mistake apparent on record under section 154 of the Act. On appeal by the Revenue, High Court affirmed the order of the Tribunal. (AY. 2011-12)

PCIT v. Setco Automotive Ltd. (2024)471 ITR 247 /161 taxmann.com 254 (Guj.) (HC)

2299 **S. 154 : Rectification of mistake-Mistake apparent from the record-Demand appearing in the portal-No communication of order-Rectification order and demand was quashed and set aside-Strictures-Honourable Court also directed the Principal Chief Commissioner of Income Tax, Mumbai (PCCIT) to have an enquiry conducted by a person not below the rank of Additional Commissioner of Income Tax to ascertain how such a demand came to be uploaded in the portal pertaining to petitioner and if there has been any negligence or lapse on the part of any officer, to take such action as the PCCIT will feel necessary against the said officer. [S. 14A, 115JB, 156, Art. 226, RTI Act, 2005 S. 19(1)]**

The petitioner filed its return of income, returning certain income under section 115JB. The income under the normal provisions of the Act was shown as Nil. The assessee's case was picked up for scrutiny and an assessment order under section 143(3) came to be passed determining the book profits after adding a sum under section 14A. The assessee challenged the assessment order by filing an appeal before the Commissioner (Appeals). On perusal of the portal, it was found that a demand of Rs. 46. 84 lakhs was appearing in the portal as against the assessee. It appeared that the demand arose out of an order passed under section 154. As no communication had been received with regard to the said order, representations were made to the Assessing Officer to provide copy of the rectification order. As no response was received, the assessee even filed an application under the RTI Act, 2005. In response to the application, the assessee was served with a copy of the computation sheet. The assessee, therefore, preferred an appeal under section 19(1) of the RTI Act, 2005 before the First Appellate Authority. The First Appellate Authority directed the Assessing Officer to re-examine the matter and furnish full and appropriate information sought. Notwithstanding this direction by the First Appellate Authority, the assessee received from the Assessing Officer, by a letter, the same documents which were provided earlier. The assessee filed a writ petition challenging the demand raised as per the alleged order passed under section 154. The respondent informed the Court that he has instructions that the demand has been uploaded by the erstwhile Deputy Commissioner of Income Tax on the portal but the Department does not have any file relating to that matter. The respondent states that his instructions are to inform the Court that the Department has no document to show that any notice was issued under section 154 or even an order was passed under section 154. The Revenue stated that if the Court directs, they shall remove the pending

demand from the Income Tax Portal pertaining to petitioner. High Court quashed the demand. Honourable Court also directed the Principal Chief Commissioner of Income Tax, Mumbai (PCCIT) to have an enquiry conducted by a person not below the rank of Additional Commissioner of Income Tax to ascertain how such a demand came to be uploaded in the portal pertaining to petitioner and if there has been any negligence or lapse on the part of any officer, to take such action as the PCCIT will feel necessary against the said officer (AY. 2013-14)
Bharat Serums and Vaccines Ltd. v. Dy. CIT (2024) 299 Taxman 246 (Bom.) (HC)

S. 154: Rectification of mistake-Mistake apparent from the record-Deduction of tax at source-Failure by payer to deposit tax deducted-No recovery towards tax deducted at source can be made from assessee-Recovery proceedings can only be initiated against deductor-Assessee entitled to refund. [S. 194, 205, 237, Form No. 26AS, Art. 226] 2300
Allowing the petition the Court held that no recovery towards tax deducted at source could be made from the assessee in terms of the provisions of section 205 of the Income-tax Act, 1961. The Court also held that the assessee should be given credit for the tax deducted at source though it was not reflected in form 26AS. The assessee had followed the regime put in place in the Act for collecting tax albeit, through an agent of the Government. The agent for collecting the tax under the Act who was the deductor had failed to deposit the tax with the Government and the recovery proceedings could only be initiated against the deductor. The order passed under section 154 was accordingly set aside. Since the assessee had lodged a claim with the resolution professional, if it were to receive any amount, it would deposit with the Department the amount not exceeding the tax deducted at source by the deductor undergoing the corporate insolvency resolution process. (AY. 2019-20)
BDR Finvest Pvt. Ltd. v. Dy. CIT (2024)462 ITR 141 (Delhi)(HC)

S. 154: Rectification of mistake-Mistake apparent from the record-Refund-Interest-Adjustment of refund-Order giving effect to court order-Quashing of reassessment proceedings-Pendency of rectification application-Directions issued to Assessing Officer. [S. 148, 237, Art. 226] 2301
On writ the assessee contended that the amount adjusted in excess of 20 per cent of the outstanding demand for the assessment year 2015-16 was in violation of Office Memorandums dated February 29, 2016 and July 31, 2017 (2017) 396 ITR 55 (St) issued by the Central Board of Direct Taxes. The court directed the Assessing Officer to pass an appeal effect order within four weeks and refund the amount with interest, if any, for the assessment year 2000-01 and (ii) to decide the rectification application for the assessment year 2015-16 in accordance with law within four weeks and refund the excess amount with interest, if any. (AY. 2000-01, 2015-16)
Brillon Consumer Products Pvt. Ltd. v. Dy. CIT (2024)462 ITR 138 (Delhi)(HC)

2302 **S. 154: Rectification of mistake-Mistake apparent from the record-Deduction of tax at source-Refund-Application is pending-Direction is issued to pass speaking order. [Art. 226]**

The assessee filed a rectification application for grant of refund which was not granted in spite of several reminders. On a writ allowing the petition, that the Assessing Officer was directed to decide the assessee's rectification application by way of a speaking order in accordance with law within eight weeks and consequential refund with up-to-date interest, if any, be released in further eight weeks' time. (AY. 2015-16)

Afilias India Pvt. Ltd. v. Dy. CIT (2024)460 ITR 220 (Delhi)(HC)

2303 **S. 154: Rectification of mistake-Mistake apparent from the record-Refund-Short grant of credit of tax deducted at source-Brought forward loss and unabsorbed depreciation-Direction issued to decide the application within eight weeks' time. [Art. 226]**

On writ petitions by the assessee-company seeking directions to the Revenue to dispose of the rectification applications dated June 30, 2021, and January 29, 2020, and to issue refund of amounts for the assessment years 2017-18 and 2018-19, against the short-grant of credit of tax deducted at source as well as brought forward loss and unabsorbed depreciation. The Court directed the Deputy Commissioner to decide the assessee's rectification applications dated June 30, 2021, and January 29, 2020, by way of a speaking order in accordance with law within eight weeks and release to the assessee consequential refunds with up-to-date interest, if any in further eight weeks' time. (AY. 2017-18, 2018-19)

Afilias India Pvt. Ltd. v. Dy. CIT (2024)461 ITR 90 / 161 taxmann.com 235 (Delhi) (HC)

2304 **S. 154: Rectification of mistake-Mistake apparent from the record-Inadvertently disclosed income in its return-Return was accepted u/s. 139(1) –Rectification is rejected-Tribunal allowing the claim-Dismissing the appeal the Court held that merely because respondent included the income in the return as taxable cannot make it amenable to imposition of tax-DTAA-India-USA [S. 139(1), 143(1), 260A, Art. 14]**

The assessee filed its return of income for AY. 2018-19 disclosing income received from Heidrick and Struggles India P. Ltd. under the head 'Income from other sources'. The return was processed u/s. 139(1) of the Act by CPC. The assessee sought its rectification in view of provisions of Article 14 of Indo-USA DTAA. However, CPC rejected the same and CIT(A) confirmed view taken by CPC. However, the Tribunal in view of Circular 14 dated 11. 04. 1955 and also rectification having accepted by CPC in two other group companies viz. Heidrick and Struggles Pvt. Ltd., Singapore and Heidrick and Struggles Pvt. Ltd. UK, allowed the appeal filed by the assessee. The Revenue filed belated appeal before the High Court. After condoning the delay, the High Court dismissed appeal holding that circular 14 was applicable in the case of the assessee and merely because respondent assessee placed the income under wrong head, cannot possibly make it amenable to imposition of tax. (AY. 2018-19)

CIT (IT) v. Heidrick and Struggles Inc. (2024) 461ITR 33 (Delhi)(HC)

Editorial: Followed CBDT Circular 14 of 1995 dated 11. 04. 1995.

Referred CIT v. Bharat General Reinsurance Co. Ltd. (1971)81 ITR 303 (Delhi)(HC)

S. 154: Rectification of mistake-Mistake apparent from the record-Order passed by the CPC without issuing any prior notice/intimation-Disallowance of PF /ESI-Jurisdictional High Court in favour of assessee-Adjustment is bad in law. [S. 36(1) (va)] 2305

Held that the order under S. 154 passed by the CPC without issuing any prior notice granting an opportunity of being heard to the assessee is bad in law. The issue of allowability of PF/ESI contributions already stood decided in favour of the assessee by a decision of the jurisdictional High Court as on the date of passing of rectification order. (AY. 2017-18)

Avia Xpert (P) Ltd. v. ITO (2024) 231 TTJ 310 / 241 DTR 161 / 38 NYPTTJ 1031 (Delhi) (Trib)

S. 154: Rectification of mistake-Mistake apparent from the record-Limitation-Non-service of intimation under S. 143(1)-The four-year limitation seeking rectification starts ticking the moment the assessee is in receipt of the order-Rejection of application being time barred is not justified. [S. 80P(2), 143(1), 154(7)] 2306

Held that in the absence of anything to prove that the intimation under S. 143(1) was served on the assessee, there is no question of calculating the period of limitation of four years for rectification thereof under s. 154 from the date of passing of intimation and, therefore, the application seeking rectification of said intimation could not be rejected as time-barred. (AY. 2010-11 to 2013-14)

Shree Jay Limbach Co-Operative Credit Society Ltd. v. ITO (2024) 229 TTJ 100 / 236 DTR 273 (SMC) (Ahd.)(Trib)

S. 154: Rectification of mistake-Mistake apparent from the record-Survey-Stock Offered-Assessed as business income-Rectification order is quashed. [S. 69D, 115BBE, 143(3)] 2307

Tribunal held that unaccounted stock found during survey is related to business and thus assessable as business income; assessee having offered additional income on account of stock difference as business income and the AO having accepted the same, the rectification order passed by the AO under s. 154 applying S. 115BBE to the said income is not sustainable. Followed, *Hari Narain Gattani v. Dy. CIT (2021) 210 TTJ 771 (Jaipur) (Trib)* (AY. 2015-16)

Sanjay Gupta v. ACIT (2024) 229 TTJ 29 (UO)(SMC) (Jaipur)(Trib)

S. 154: Rectification of mistake-Mistake apparent from the record-Interest on refund-Assessing Officer is directed to allow interest under Section 244A up to respective dates of credit of refund in account. [S. 244A] 2308

Held that the Commissioner (Appeals) had fallen in error in making observation that the assessee had sought rectification of the determination of interest under section 244A of the Act while in fact the question was the period for which the interest should have been paid. There was no question of making a conclusion after a long process so as to be outside the purview of section 154 of the Act. It was merely a matter of rectification of a clerical nature arising out of a mistake in calculation of the period for which interest was payable to the assessee. Admittedly, the refund had been credited on February 25, 2021 while the refund was determined on February 20, 2009. The assessee

is entitled to interest up to February 25, 2021, which should have been rectified by the Assessing Officer. Consequently, the Assessing Officer is directed to allow the interest under section 244A of the Act up to the respective dates of credit of refund in the account of the assessee. (AY. 2007-08, 2008-09)
Everest Business Advisory India P. Ltd. v. ACIT (2024)113 ITR 5 (SN)(Delhi)(Trib)

2309 **S. 154: Rectification of mistake-Mistake apparent from the record-Co-Operative Society-Deduction-Interest-Mutuality-Claims and contentions both on legal and factual-Matter remanded to Commissioner (Appeals)-Delay in filing of appeal is condoned. [S. 80P, 143(1), 253(2)]**
Held that the claims and contentions of the assessee both on legal as well factual aspects required verification by the authorities below. The matter is remanded to the Commissioner (Appeals) to reconsider the contentions, claims as well evidence filed by the assessee, and to pass appellate order on the merits, both factual and legal, in accordance with law. (AY. 2018-19)
Punyabhoomi Welfare Service Society v. ITO (2024)113 ITR 58 (SN) (Ahd)(Trib)

2310 **S. 154: Rectification of mistake-Mistake apparent from the record-Depreciation-Additional depreciation-Additional claim-Mismatch to be looked into and rectified after verification-Matter remanded. [S. 32, 143(1)]**
Held that plant and machinery put to use for less than 180 days. Claiming only 50 per cent of such additional claim in immediate previous year and remaining 50 per cent should also be allowed in year under consideration. Matter remanded. Additional claim for gratuity on payment basis is not made in return. Though the Assessing Officer has no power to entertain request in rectification application without filing revised return, however, the assessee had every right to make such claim before higher forum. Claim made by assessee to be looked into by Assessing Officer on merits in accordance with law. (AY. 2015-16)
Shilp Gravures Ltd. v. Dy. CIT (2024)112 ITR 23 (SN)(Ahd.)(Trib)

2311 **S. 154: Rectification of mistake-Mistake apparent from the record-Intimation-Appeal against intimation withdrawn on ground return selected for scrutiny-Regular assessment on scrutiny made without taking into account disallowances proposed in intimation-Rectification order in respect of delayed deposit of employee contributions to the provident fund and employees Stat Insurance-Change of law-No merger of orders passed under intimation and regular assessment-Rectification is proper. [S. 143(1), 143(3)]**
Dismissing the appeal the Tribunal held that while exercising power under section 154 read with section 143(3) of the Act, the Assessing Officer had not gone back to reconsider the issues examined under section 143(3) and make an addition thereupon. It was not a case where rectification power was exercised consequent to any change of law or applying a different proposition of law than one considered while framing the assessment under section 143(3) of the Act. The rectification order made it apparent that the income determined in intimation under section 143(1) was taken as the income for making further additions under the section 143(3) assessment. That was a mistake apparent from record as the intimation under section 143(1) stood final after

withdrawal of the appeal by the assessee. Accordingly, the difference between the returned income of Rs. 18,10,42,260 and the assessed income under section 143(1) of Rs. 30,93,07,020, was erroneously ignored while passing order under section 143(3). Therefore, the Assessing Officer had committed no error in exercising the rectification powers under section 154. Where the additions made under the intimation under section 143(1) and those made under section 143(3) were on different issues and heads, the intimation under section 143(1) of the Act stood final after withdrawal of the appeal by the assessee, and there was no merger of the two orders. The addition was made in intimation under section 143(1) of the Act with regard to disallowances on account of delayed contribution to the provident fund and employees' State insurance and the house property income. In the scrutiny assessment these issues were not under examination so as to say that while exercising rectification powers the Assessing Officer had made rectification due to any change in opinion of law or fact. Thus, the order of the Commissioner (Appeals) was sustained. (AY. 2017-18)
Orient Craft Ltd. v. Dy. CIT (2024) 110 ITR 622 (Delhi) (Trib)

S. 154: Rectification of mistake-Mistake apparent from the record-Source of investment-Accepted in original assessment proceedings-Change of opinion is not possible. 2312
Held that the finding of the Assessing Officer in the assessment order was concluded after considering all the documentary evidence and personal appearances on behalf of the assessee and he did not draw any adverse inference against the assessee. Section 154 of the Act mandates rectification of mistake apparent from record. The source of the investment which was accepted by the Assessing Officer in his original assessment order could not be revised under section 154 of the Act as it could not be said to be a mistake apparent from the record. The Assessing Officer wanted to change his view in the garb of rectification of mistake under section 154 of the Act, which was not permissible under the law. The order passed by the Assessing Officer under section 154 of the Act is invalid and quashed. (AY. 2010-11)
Kanta (Smt.) v. ITO (2024)111 ITR 77 (SN)(Delhi)(Trib)

S. 154: Rectification of mistake-Mistake apparent from the record-Unexplained investments-Survey-Payment made to vendor under Registered sale-cum-General power of Attorney agreements-Amounts received as advances from 30 Persons-Only part of sum confirmed-Agreeing to addition of balance as unexplained investment-Vendor unilaterally cancelled all General Power of attorney-cum-sale agreements by registered cancellation deeds and took back possession of property on ground that he had not received any consideration from assessee-Registered cancellation of sale deed is not valid without decree of Civil Court Rejection of rectification application is valid. [S. 69,133A, Specific Relief Act, 1963, S. 31, 32, 33, Registration Act, 1908] 2313
Dismissing the appeal the Tribunal held that sections 31, 32 and 33 of the Specific Relief Act, 1963 clearly mentioned that any instrument which has been registered under the Indian Registration Act, 1908 has to be cancelled by the civil court by way of decree only and then only the Registrar can implement the cancellation of the earlier instrument so registered with them. In the present case, there was no decree obtained from the civil court by the landowner with regard to cancellation of the

earlier agreement and therefore, the registered cancellation of the sale deed was not valid in the eyes of law. Further, there was no cogent material to suggest that without passing the consideration, the landowner registered an agreement of sale-cum-general power of attorney in favour of the assessee. But, the recitals were very clear that the vendor had received the sale consideration and executed the document. Therefore, simply cancelling the registered agreement of sale-cum-general power of attorney by way of a registered deed of cancellation was not enough to come to a conclusion that the assessee had not paid the consideration to the landowner. Moreover, the assessee, for whatsoever the reason, himself admitted before the Assessing Officer for making an addition of Rs. 35,96,210, and therefore the assessee was precluded from saying that he had not paid any amount to the landowner and hence there was not any unexplained investment made by the assessee. Moreover, the Assessing Officer had considered the creditworthiness of the 30 investors and the assessee got relief to the extent of Rs. 63,03,790. Apart from this, the assessee had also failed to establish the creditworthiness of the 30 investors. In these circumstances, there was no infirmity in the orders of the Assessing Officer and the Commissioner (Appeals), dismissed the rectification application. (AY. 2004-05)

Kotyala Sujatha (Smt) v. ITO (2024)110 ITR 12 (SMC) (SN) (Vishakha)(Trib)

2314 **S. 154: Rectification of mistake-Mistake apparent from the record-Amounts not deductible-Deduction at source-Second proviso to section 40(a)(ia) which came into effect from 01-04-2013 was retrospective in operation-Jurisdictional High Court-Rectification application is allowed. [S. 40(a)(ia)]**

The AO disallowed the expenditure for non-deduction of tax at source on certain expenses. On appeal the assessee was granted certain relief. Order of Tribunal was affirmed by the Supreme Court. The assessee filed rectification application under section 154 claiming relief under second proviso to section 40(a)(ia). It had filed all necessary documents to Assessing Officer evidencing facts regarding applicability of second proviso to payments disallowed u/s. 40(a)(ia) of the Act. The AO denied the relief. CIT(A) affirmed the order of the AO. On appeal the assessee relied on the judgement of the Gujarat High Court in case of *Pr. CIT v. Arvind Lifestyle Brands Ltd.*, R/Tax Appeal No. 539 of 2019, order dated 05-08-2019 had categorically held that second proviso to Section 40(a)(ia) which was introduced on Statute by Finance Act, 2012, with effect from 01-04-2013 was retrospective in operation and was curative in nature. Tribunal held that Revenue had not controverted position of law as laid down by jurisdictional High Court. Accordingly, the application filed by assessee u/s. 154 seeking benefit of second proviso to section 40(a)(ia) is entertained and allowed since assessee had pointed out a mistake apparent from record. (AY. 2005-06)

Backbone Tarmet NG JV. v. ITO (2024) 207 ITD 50 (Ahd.) (Trib.)

S. 154: Rectification of mistake-Mistake apparent from the record-Property held for charitable purposes-Educational institution-Net income or gross receipts-Exemption denied-Corpus donation-Final accounts reflected a loss-Matter is remanded to Assessing Officer for taking on record audited final accounts on basis of which assessee had returned income and then pass an order under section 154-Provision under section 10(23C)(iiia) did not speak of gross receipt but annual receipt which would not include voluntary contribution toward corpus, assessee is entitled for exemption of its income, including capital receipt, under section 10(23C)(iiiad). [S. 10(23C (iiia) 11(1)(d), 12A, 12AA, 143(1)(a)] 2315

Assessee is an educational institution and has filed its return of income claiming exemption on entirety of its gross receipt under section 11. Claim was denied under section 143(1)(a). Assessee moved an application under section 154 stating that it's income for relevant year was only Rs. 11. 19 lakhs, balance being corpus donation is eligible for exemption under section 11(1)(d). Assessing Officer rejected application filed by assessee on ground that assessee is not registered under section 12AA. Meanwhile, assessee applied for registration under section 12AA which was granted on 20-8-2016 with effect from assessment year 2015-16. On appeal the CIT(A) affirmed the order of the AO. The Tribunal held that the assessee being admittedly not registered under section 12AA for relevant year, it's claim under section 11 could not be admitted, and was to be rejected at threshold, i. e., be it under section 11(1)(a), (b) or (d). Since, assessee's final accounts reflected a loss on operations, which were mistakenly returned as income, matter was to be remanded to Assessing Officer for taking on record audited final accounts on basis of which assessee had returned income and then passing an order under section 154. Assessee moved an application under section 154 stating that it's income for relevant year was only Rs. 11.19 lakhs, balance being corpus donation was eligible for exemption under section 10(23C) (iiiad). Assessing Officer denied same for reason that assessee's admitted gross receipt was in excess of Rs. 100 lakhs. Since provision under section 10(23C) (iiia) did not speak of gross receipt but annual receipt which would not include voluntary contribution toward corpus, assessee was entitled for exemption of its income, including capital receipt, under section 10(23C) (iiiad). (AY. 2013-14)

Nehru Memorial Education Society v. ITO (2024) 206 ITD 648 (Cochin) (Trib.)

S. 154: Rectification of mistake-Mistake apparent from the record-Interest income from Government securities Commissioner (Appeals) was to be directed to carry out necessary verifications and if claim of assessee was found to be correct, relief was to be allowed to assessee in accordance with law. [S. 10(15), 143(1), 250] 2316

Assessee claimed that interest income earned by it from Government companies, which was exempt under section 10(15) was inadvertently stated as dividend income in its return of income instead of interest income received from investments made in several Government Companies which was exempt from tax. The Assessing Officer rejected application under section 154 of the Act. On appeal the Commissioner (Appeals) dismissed the rectification. On appeal, Tribunal is directed to carry out necessary verifications and if claim of assessee was found to be correct, relief was to be allowed to assessee in accordance with law. *Zen Tobacco (P.) Ltd. v. Asstt. CIT (2016) 65 taxmann. com 320 (Ahd)(Trib)* (AY. 2017-18)

Shital Bachubhai Vaidya v. ADIT (2024) 205 ITD 42 (Ahd.) (Trib.)

2317 **S. 154: Rectification of mistake-Mistake apparent from the record-Registration-Rejection of claim under section 12A/12AA is not justified-Rectification application was to rectify inadvertent mistake which had crept in ITR filed by it online-Order of Assessing Officer denying the benefit of registration is quashed and set aside. [S. 12A, 12AA]**
Assessee is a charitable trust registered under section 12A since 30-12-1993. Assessing Officer rejected claim of assessee under section 12A/12AA for reason that assessee inadvertently omitted to show in the return that section 12A registration had been obtained by it. Assessee filed rectification application under section 154 which Assessing Officer rejected stating that benefit of exemption under section 12A/12AA could not be allowed as there was no claim for same in return of income which could have been rectified by filing revised return which was not done. CIT(A) affirmed the order of the Assessing Officer. On appeal the Tribunal held that since assessee did not seek registration or any fresh claim of benefit of exemption under section 12A/12AA in its rectification application under section 154, instead it made a mere request to rectify inadvertent mistake which had crept in ITR filed by it online. Assessing Officer was not right in denying benefit of registration under section 12A. (AY. 2013-14)
Delhi Policy Group (reg.) v. ITO (2024) 204 ITD 118 (Delhi) (Trib.)

2318 **S. 156A: Modification and revision of notice in certain cases-Demand-Moratorium-CIRP proceeding was initiated against assessee and a resolution order was also passed-Assessing Officer was directed to modify demand payable in conformity with order of an Adjudicating Authority as defined in section 5(1) of the IBC and shall thereafter serve on assessee a notice of demand specifying sum payable, if any, and such notice of demand shall be deemed to be a notice under section 156 and provisions of Act shall apply accordingly. [S. 156, Insolvency and Bankruptcy Code, 2016, S. 5(1)]**
Assessee's appeal was dismissed due to an ongoing moratorium on account of initiation of insolvency resolution proceedings by the CIT(A). On appeal the asessee contended that no demand/proceedings pertaining to pre-CIRP periods survived after passage of order of NCLT and that section 156A authorizes Assessing Officer to modify demand order in conformity with order of adjudicating authority. Section 156A provides that where any tax, interest, penalty, fine or any other sum in respect of which a notice of demand has been issued under section 156, is reduced as a result of an order of an Adjudicating Authority as defined in IBC, Assessing Officer shall modify demand payable in conformity with such order and shall thereafter serve on assessee a notice of demand specifying sum payable, if any, and such notice of demand shall be deemed to be a notice under section 156 and provisions of Act shall apply accordingly. Tribunal directed the Assessing Officer to take necessary action under section 156A accordingly. (AY. 2008-09 to 2013-14, 2016-17 to 2018-19)
Aircel Ltd. v. DCIT (2024) 208 ITD 199 /116 ITR 36 (SN) (Chennai) (Trib.)

2319 **S. 158BA: Block assessment-Undisclosed income-Unexplained money-Shares-Block assessment-Assessment has to be made on actual undisclosed income and not on notional basis-The submission that the amount involved is below monitory limit is also not accepted-Matter remanded to the Assessing Officer. [S. 69A, 132, 158B(b), 158BC, 260A, 268A]**
The Revenue has filed against the order of Tribunal which has dismissed the appeals of the Revenue. On behalf of Revenue, it was contended that though the amalgamation

is approved by Gujarat High Court, cash payments and interests were paid till date of Search. According to Revenue there were capital gains which were not offered to tax. The submission that the amount involved is below monitory limit is also not accepted. Allowing the appeal of the Revenue the Court held that Assessment has to be made on the basis of actual records instead of on notional basis. Matter remanded to the Assessing Officer. (BP. 1-4 1998 to 15-12 1998)

CIT v. Dadha Pharma (P.) Ltd. (2023) 153 taxmann.com 106 / (2024) 471 ITR 545 (Mad.) (HC)

CIT v. S. Mohancahnd Dadha (Indl) 2023) 153 taxmann.com 106 / (2024) 471 ITR 545 (Mad.) (HC)

S. 158BC: Block assessment-Search-Undisclosed income-Disclosure was made in the return filed after search action-Income from HUF-Return was not filed-Addition is justified-No substantial question of law. [S. 132, 158BB, 260A] 2320

Court held that the investment made on behalf of the sons in the company was not disclosed in the returns of the assessee. Only on the return filed pursuant to the search, the disclosure was made regarding the floating of the company with the assessee, his wife and mother as partners. This led to the discovery of the investment made in the name of his sons, hence, the assessee having accepted this in the reply submitted to the AO pursuant to the notice issued under S. 132, it is relatable to the search and the addition is proper. As regards the investment of Rs. 50,000 in the name of HUF was deleted by the first appellate authority. The education expenses also stood confirmed by the assessee. The Tribunal found that the information regarding assessee's son pursuing his education was discovered as a result of search. It is pursuant to that a requisition was made from the school and the entire expenses were detected for the four assessment years; of which two stood explained. The assessee was not able to substantiate the source of income as put forth detected in the two years; allegedly by way of income from HUF, the returns of which were not filed in the relevant assessment year and a gift, which was just a bland statement without any substantiation. The additions made were as a result of the material recovered and the admissions made pursuant to the search directly relatable to the search. On the above finding no question of law arises from the impugned order of the Tribunal and the finding on facts of the AO, affirmed by the first appellate authority and the Tribunal are unassailable in the present appeal. S. 158BB speaks of computation of undisclosed income of block period "in accordance with the provisions of the act on the basis of evidence found as a result of search or requisition of books of accounts or other documents and such materials or information as are available with the AO and related to such evidences". (BP. 1989-90 to 1998-99)

Satyendra Kumar v. CIT (2024) 336 CTR 619 (Pat.) (HC)

2321 **S. 158BC: Block assessment-Search and seizure-Undisclosed income-Protective assessment-Altering protective assessment of assessee without any change or development in findings recorded in second block assessment order of other company-Second block assessment order in case of assessee vitiated-Assessee proved nature and source of credit entries in bank accounts of two companies sourced from another company and its subsidiaries-Tribunal order setting aside second block assessment order of assessee justified. [S. 132, 260A]**

Dismissing the appeal of the Revenue the Court held that the Tribunal had taken note of the fact that the court had set aside the block assessment in the case of Shaw Wallace and Company Ltd. and directed fresh assessment to be made. Therefore, the Tribunal thought it fit to set aside the assessment in the case of the assessee and remand the matter to the Assessing Officer for fresh assessment with a direction to take into consideration further developments in the block assessment of Shaw Wallace and Company Ltd. The remand was for a very limited purpose and therefore, the Assessing Officer in the reassessment proceedings could not have altered the protective assessment of the assessee as there was no change or development in the findings recorded in the second block assessment order of Shaw Wallace and Company Ltd. Therefore, the Tribunal was right in holding that the second reassessment order was vitiated as it exceeded the specific direction given by the Tribunal. The Tribunal had rightly came to the conclusion that when there was no change in the reassessment order in the case of Shaw Wallace and Company Ltd. taking note of the direction issued by the Tribunal in the order in the year 1999, the Assessing Officer in the second reassessment proceedings could not have disturbed the findings rendered in the original block assessment order in the year 1998 in the assessee's case as it would amount to the second Assessing Officer reviewing his own order, this power was not vested with him. The Tribunal rightly concluded that the protective assessment was not warranted in the hands of the assessee because the assessee had been able to discharge the onus for showing the nature and source of credit entries in the bank account of Kalao Engineering Ltd. and Pragati Engineering Ltd. as well as in the bank accounts of N. C. Jain and P. L. Mittal which in turn were sourced from Shaw Wallace and Company Ltd. and its subsidiaries and it was evident that the source of money for Shaw Wallace and Company Ltd. and subsidiaries was in turn from ICDs which prompted the Assessing Officer to disallow the interest expenditure in the hands of Shaw Wallace and Company Ltd. Therefore, the addition made in respect of credit entries in the bank accounts of the two entities were unjustified and rightly directed to be deleted. Thus, the Tribunal after verifying and examining the factual position had granted relief to the assessee and was justified in setting aside the second assessment order. (BP. 1-4-1986 to 27-8-19986)

PCIT v. Ram Ratan Modi [2024] 464 ITR 690 (Cal.) (HC)

2322 **S. 158BC: Block assessment-Cash credits-Suppression of sales-Industry practice-Undisclosed income-Addition on total sale proceeds is unjustified-Unexplained cash credit is affirmed. [S. 68, 132A]**

Held that suppression of sales estimated by practice prevalent in industry without backing evidence. Order of CIT(A) deleting the addition is affirmed. Addition as unexplained cash credit is affirmed. (BP. 2-8-1996 to 11-2-2000)

Dy. CIT v. Yash Organics Ltd. (2024) 115 ITR 61 (SN)(Ahd.) (Trib)

S. 158BD : Block assessment -Undisclosed income of any other person-Block period 1-4-1996 to 7-5-2002-Assessing Officer of searched person had not recorded the satisfaction for initiation of proceedings-Order is without jurisdiction and unauthorised-No substantial question of law. [S. 132, 144, 153C, 260A] 2323

A search in premises of 'UIC' Group was conducted in which certain documents relating to assessee were found and Assessing Officer of assessee passed an assessment order under section 158BD read with section 144 of the Act. Tribunal quashed the order on the ground that since Assessing Officer of searched person had not recorded any satisfaction note for initiating proceedings under section 158BD against assessee and also had not handed over to Assessing Officer of assessee seized documents, etc., to enable him to proceed under section 158BC hence, the order passed by Assessing Officer is without jurisdiction and unauthorized. High Court affirmed the order of the Tribunal. No substantial question of law.

PCIT v. Milia Tracon (P.) Ltd. (2024) 300 Taxman 273 (Cal.)(HC)

S. 158BD : Block assessment-Undisclosed income of any other person-Satisfaction note is sine qua non and must be prepared by Assessing Officer who has jurisdiction over such other person- Assessment order is illegal-Additions confirmed by the Tribunal is deleted. [S. 131, 153C, 260A] 2324

Assessee was director in two companies namely, Zenith Finvest and ARC Finance. He was partner in S. K. Investment, which was a partnership firm. Search in office premises of aforesaid three entities was conducted and certain documents including computerized cash book, journal, bank book, ledger and trial balance etc. relating to aforesaid entities, assessee and his family members were seized. Simultaneously, a search was conducted at the premises of J. M. (father of the assessee), during which cash amounting to Rs. 12. 57 lakhs was found in a safe in the possession of the assessee's father and was seized. Assessing Officer made an addition of said cash in hands of assessee under provisions of section 158BD which was confirmed by Tribunal. Statements of assessee and his father were recorded under section 131 wherein assessee claimed that cash seized from safe of his father belonged to his aforesaid three entities. Further, entire facts and evidences in form of seizure of books of account including cash book, statement of assessee and J. M. under section 131, statement of parties who made payment to entities of assessee recorded under section 131 and letters of J. M. and assessee evidencing sufficient explanation regarding cash seized to be belonging to aforesaid entities and reflected in their cash book were well available on record. Court held that in ignorance of evidences on record, addition made by Assessing Officer/Tribunal in hands of assessee was unsustainable. Even otherwise, since Assessing Officer had not prepared a satisfaction note either before or along with or even after assessment proceedings, as mandatorily required under section 158BD, entire proceedings initiated by Assessing Officer to pass an assessment order under section 158BC was illegal and liable to be set aside. [BP. 1-4-1989 to 9-9-1999]

Ashok Vardhan Kothari v. CIT (2024) 298 Taxman 145 /466 ITR 737 (Cal)(HC)

2325 **S. 158BE : Block assessment-Time limit-No statement was taken of assessee-No substantial question of law. [S. 132,132A, 158BC, 260A]**

Dismissing the appeal of the Revenue, the Court held that the Department had not even examined the assessee in the course of search or inspection. Statements were taken only from the wife of the assessee and not from the assessee. Assets were also said to have been accepted as owned by the assessee's wife. Contention regarding summons for recording statement had not been issued on the assessee. Order of Tribunal is affirmed.

CIT v. Madhuri Sharma (Smt.) (2024) 336 CTR 362 (Pat) (HC)

2326 **S. 161 : Liability of representative assessee-A determinate Trust with sole beneficiary is liable to be taxed at same rate as applicable to its beneficiary. [S. 115BAA, Form No-10IC]**

The assessee is a discretionary trust, which held investments mainly for its beneficiary, i. e., Reliance Industrial Investments and Holdings Limited (R). Since Reliance Industrial Investments and Holdings Limited being a limited company opted to be taxed under the new tax regime under section 115BAA by filing Form 10-IC, claiming to be taxed at the rate of 22 per cent plus applicable surcharge and CESS. The assessee being a representative assessee, claimed to be taxed at same rate applicable to its beneficiary. The claim was dismissed as the assessee was not treated as a representative assessee. On appeal, the Commissioner (Appeals) accepted the status of the assessee as a representative assessee and held that since the assessee was a determinate trust with 'R' as its sole and 100 per cent beneficiary and settler and as 'R' had opted to be taxed under the new tax regime at the rate of 22 per cent being a representative assessee under section 161, the assessee was also liable to be taxed at the same rate, i. e., at the rate of 22 per cent plus applicable surcharge and cess. Order of CIT(A) is affirmed by the Tribunal. Tribunal followed the Mrs. Amy F. Cama v. CIT(1999) 237 ITR 82 (Bom) (HC). (AY. 2021-22)

ITO v. Petroleum Trust (2024) 165 taxmann.com 504 (Mum)(Trib)

2327 **S. 164 : Representative assessees-Charge of tax-Beneficiaries unknown-Trust-Maximum marginal rate-Temple-Income from charity received from devotees coming to the temple and interest on bank deposits-Beneficiaries are general public-Revenue Department website also advises that the tax rate of the trust is as applicable to the individual-The tax rate as specified in S. 164(2) will apply to the AOP/Individual and the initial exemption is also available. [S. 2(37), 12A, 164(1), 164(2)]**

Tribunal held that the assessee being a religious Trust maintaining a temple, its beneficiaries are the general public and, therefore, it is liable to tax at the rates applicable to AOP/individual in view of the specific provision of s. 164(2) and not at maximum marginal rate. The Revenue Department website also advises that the tax rate of the trust is as applicable to the individual. The assessee has been granted registration certificate under S. 12A, benefit of deduction of the expenditure claimed by the assessee as per object of the trust is allowable. (AY. 2013-14 to 2017-18)

Shri Digambar Jain Mandir Trust v. ACIT (2024) 230 TTJ 1 (UO (Jodhpur) (Trib)

S. 164: Representative assessees-Charge of tax –Private discretionary trust-Shares of beneficiaries were indeterminate or unknown-Trust under will –Assessable as total income of an Association of persons-Deeming fiction cannot extend to an extent denial of deduction-Chapter VI-A-Deduction under section 80C and 80TT is available. [S. 2(31), 80C, 8OTT, 160(1)(iv), 164(1)(ii), 167B] 2328

Assessee-trust was declared by one Smt. Pashiben Shambhubhai Prajapati for the benefit of her sons namely Shri Dhulabhai Shambhubhai Prajapati and Shri Ashokbhai Shambhu Prajapati through her will, for benefit of her sons and their families. Assessing Officer applied maximum marginal rate of taxes on income declared by assessee on grounds that, trust was a private discretionary trust where shares of beneficiaries were indeterminate or unknown. Further, deductions under Chapter VI-A were also denied. CIT(A) up held the order of the AO. On appeal the Tribunal held that since beneficiaries under trust were defined, i. e., two sons of Smt. Pashiben Shambhubhai Prajapati and their families but, specific share of each beneficiary on whose behalf income was received by trustees were indetermined and unknown, as same was not specified in Will, section 164(1) read with clause (ii) to Explanation (1) to section 164 would become relevant and relevant income would be chargeable to tax at maximum marginal rate. However, since trust declared by Smt. Pashiben Shambhubhai Prajapati was only trust declared by her, income of assessee would be chargeable to be taxed under provisions of section 164(1) read with clause (ii) of first proviso to section 164(1), as it were total income of an association of person (AOP). Deeming fiction created under section 164(1) read with clause (ii) of first proviso to section 164(1), that tax would be charged on relevant income, as if it were total income of an association of person (AOP) could not extend to an extent of denial of deduction under sections 80C and 80TTA which is otherwise available to individuals, as all beneficiaries under instant trust were individuals. (AY. 2021-22)

Smt. Pashiben Prajapati Family Trust (DISC) v. ITO (2024) 209 ITD 434 (Ahd)(Trib.)

S. 167B : Charge of tax-Shares of members unknown-Discretionary trust-Anti avoidance rule-Maximum rate of surcharge applicable in the case of an individual-This rate applies to a private discretionary trust as well. [S. 2(29C), 143(1)] 2329

Held that the maximum marginal rate is to be computed by taking the maximum rate of income-tax and maximum rate of surcharge applicable in the case of an individual. This rate applies to a private discretionary trust as well. The levy of maximum marginal rate on trust is thus specific anti avoidance rule and therefore should be given a strict interpretation. (ITA No. 2197/ Mum/ 2024 dt. 7-10-2024) (AY. 2022-23).

Aradhya Jain Trust v. ITO (2024) BCAJ-November-P. 47 (Mum)(Trib)

S. 167B : Charge of tax-Shares of members unknown-Maximum marginal rate-Association of persons-Joint venture between TPL and Chint-Share in AOP's profit is determinate i.e., TPL 99. 99 per cent and Chint 0.01 per cent-TPL is domestic company and Chint was a Chinese company, 99. 99 per cent of income of TPL is to be taxed at maximum marginal rate (MMR) of 30 per cent plus surcharge and cess and 0. 01 per cent of income of Chint at MMR of 40 per cent plus surcharge and cess. [S. 2(31)(v)] 2330

Assessee, an Association of Persons (AOP), was a joint venture between TPL and Chint. Assessing Officer applying tax rate of 40 per cent on entire taxable income instead of 30 per cent offered by assessee on reasoning that one of members of AOP; being foreign

company, whose income was above taxable limit, was paying tax at rate of 40 per cent. CIT(A) up held the order of the AO. On appeal the Tribunal held that since assessee had clearly mentioned in its ITR that members' share in AOP's profit was determinate i. e., TPL 99. 99 per cent and Chint 0. 01 per cent, since TPL is domestic company and Chint was a Chinese company, 99. 99 per cent of income of TPL is to be taxed at maximum marginal rate (MMR) of 30 per cent plus surcharge and cess and 0. 01 per cent of income of Chint at MMR of 40 per cent plus surcharge and cess. (AY. 2019-20)
JV of TATA Projects Ltd. and Chint Electric Company Ltd. v. ITO (2024) 208 ITD 782/114 ITR 42 (SN) (Delhi) (Trib.)

2331 **S. 170A: Effect of order of Tribunal or Court in respect of business reorganisation-Assessment-Effect of order of Tribunal or Court in respect of business re-organisation-Amalgamation-Consolidated return-Assessment order within two days of reply by making 59 additions-Assessment order is quashed and set aside. [S. 148, 143(3), Art. 226]**

Order of NCCT was issued on 18th April, 2022. By virtue of the order, the scheme of amalgamation between PT (P) Ltd. and CS (P) Ltd. was sanctioned. Appointed date was specified as 1st April, 2020. Therefore, Section 170A enables the transferee or successor to file the modified return within a specified time limit. Option to file the modified return under S. 170A had not been enabled in the portal. Assessee filed return on 14th March, 2022 which was revised on 24th Aug., 2022. In view of the scheme of amalgamation having become effective and thereby operational from 1st April, 2020, the assessee's consolidated return of income, after its amalgamation, should have been the basis for assessment based on the scrutiny. Further, the issuance of an assessment order within about two days from the receipt of the reply to the show-cause, in a matter relating to about
59 additions to income, constitutes a further reason to interfere with the impugned order. It is open to the respondents to issue fresh notices and make a reassessment on the basis of such consolidated return of income. (AY. 2021-22)
Pallava Textiles (P) Ltd v. Assessment Unit (2024) 337 CTR 881 / 467 ITR 539 / 159 taxmann.com 246/ 236 DTR 39 (Mad) (HC)

2332 **S. 176: Discontinued Business-Company struck off from official register of companies-Reassessment-Directors-Reassessment proceedings against the Directors in case of struck companies. S. 176 is applicable only when the company has discontinued the business. [S. 147, 148, 176(5), 176(7), Companies Act Art. 226]**

The petitioner/assessee was the Director of the Speed & Safe Freight Systems India Private Limited and the said Company was struck-off from the official register of companies with effect from 29-10-2019. He received a notice under section 148 on 31-3-2021 for reopening of assessment for the relevant assessment year 2015-16. On writ petition, the assessee submitted that the assessment order could not be reopened against the company, which was already struck-off. It was only after the revival of the Company, the Authority would get power to reopen the assessment and pass further orders. For this the respondent/revenue would have to file an application for revival under section 252 of the Companies Act, read with rules 11 and 87 of the NCLT Rules, within the period mentioned therein. However, the impugned order was passed by the revenue

without application of mind. Hence, the said impugned order was liable to be quashed. Where a company is struck off, the reassessment proceedings against it can only be initiated by its revival. The department cannot initiate the reassessment proceedings against the Directors in case of struck companies. S. 176 is applicable only when the company has discontinued the business. (AY. 2015-16)
Pandian Anbalagan v. ITO (Mad.)(2024) 296 Taxman 499 (Mad)(HC)

S. 178 : Company in liquidation-Stay-Share application money -Corporate Insolvency Resolution Process (CIRP)-No proceedings could be initiated against assessee-company including income tax proceedings and recovery of demand or giving effect of any order. [S. 68,178(6), Insolvency and Bankruptcy Code, 2016, S. 31, 238] 2333
The AO made addition under section 68 related to transaction of share capital and share premium received from different entities against the high premium. CIT(A) up held the order of the AO. On appeal the the assessee submitted that assessee-company was undergoing Corporate Insolvency Resolution Process (CIRP) and a resolution plan was approved by the NCLT. Tribunal held that IBC is a complete Code in itself and in view of provisions of section 238 of IBC, its provisions would prevail notwithstanding anything inconsistent therewith contained in any other law for time being in force including Income-tax Act which has been specifically provided under section 178(6) of the Income-tax Act as amended with effect from 1-11- 2016. Once resolution plan is approved by Adjudicating Authority, dues including statutory dues of Government or local authority, if not part of resolution plan, stand extinguished and no proceedings in respect thereof for a period prior to date of approval under section 31 can be initiated against corporate debtor, that is, assessee company including income tax proceedings. Therefore, where assessee-company was under Corporate Insolvency Resolution Process (CIRP), no proceedings could be initiated against assessee-company including income tax proceedings and recovery of demand or giving effect of any order; appeal filed by assessee against addition made by Assessing Officer under section 68 in respect of share application money was dismissed as infructuous. (AY. 2012-13)
Kohinoor Steel (P.) Ltd. v. ITO (2024) 112 ITR 274 / 206 ITD 129(Kol)(Trib.)

S. 179 : Private company-Liability of directors-Recovery proceedings against director only if tax cannot be recovered from company-Order is quashed. [Art. 226] 2334
Allowing the petition the Court held that nothing had come on record and it was undisputed that the show-cause notice issued to the petitioner was bereft of material particulars as regards the steps said to have been taken by the Department for the purpose of recovering the tax from the company. The order is not valid. (AY. 2006-07 to 2009-10, 2011-12)
Bhailal Babubhai Patel v. PCIT [2023] 156 taxmann.com 271 (2024) 460 ITR 226 (Guj) (HC)

S. 179: Private company-Liability of directors-Order against Ex- director of company-No steps were taken to recover dues from the company-Order is set aside. [Art. 226] 2335
The assessing officer issued notice to the assessee holding him in his capacity as a director, after period of nine years post the resignation of the assessee, responsible for

the outstanding demand against the company. On writ the Hon'ble High Court held that the order passed under section 179 ought to have indicated material particulars as regards to the steps taken by the Assessing Officer for the purpose of recovering the tax from the company. Accordingly, the show cause notice issued by the assessing officer was held to be defective as the condition precedent for taking action under section 179 was not satisfied. Accordingly, the order passed under section 179 was quashed and set aside. (AY. 2006-07 to 2009-10, 2011-12)
Bhailal Babubhai Patel v. PCIT (2024) 460 ITR 226 (Guj (HC)

2336 **S. 192 : Deduction at source-Salary-Diversion of income by overriding title-Salary of teachers of Christian Institutions paid by State Government-Teachers paying their entire salaries to Church- Salaries not diverted at source by overriding title-State Government is bound to deduct tax at source on salaries-Central Board of Direct Taxes-Circulars-Circulars issued before independence of India- Subsequent circulars overriding earlier circular-Exemption granted under old circular is not binding on Revenue-SLP of assessee is dismissed. [S. 4, 5, 15, 192A up to 194LBB, Art. 136]**
On appeals by the Department against the decision of the Single Judge allowing writ petitions filed by nuns, sisters, priests and fathers, who rendered service as teachers in schools receiving grants-in-aid from the State to the extent of their full salary, against instructions of the Income-tax Department to the concerned authorities of the State Government to deduct Income-tax at source on the payment of salaries made to these teachers, nuns, etc., along with other teachers employed in such schools, the Department appealed to a Division Bench. The Division Bench *(UOI v. The Society of Mary Immaculate (Tamil Nadu) (2019) 412 ITR 545 (Mad)(HC), 2019 SCC OnLine Mad 39034)* held that the salary in question was not directly received by the congregation or religion by overriding diversion of title, but was paid by the State to the teachers who were nuns or missionaries, that the circulars issued on January 24, 1944 and in 1977 had been overridden and clarified by the subsequent circulars of February 26, 2016 and April 7, 2016, in which the Board clearly stated that these old circulars would not cover the case of salary and pension payable to such nuns or missionaries working as teachers, and that therefore tax had to be deducted at source on the salaries. The court held that neither the Income-tax Department nor the State Government had anything to do with the religious character of the institution, and therefore, could not take a stand for not making the tax deduction at source in view of the canon law. The petitions for special leave to filed by the assesses before the Supreme Court were dismissed.
Institute of the Franciscan Missionaries of Mary v. UOI (2024)469 ITR 312 / 302 Taxman 4 (SC)
Editorial : UOI v. Society of Mary Immaculate (Tamil Nadu), Madras (2019) 262 Taxman 496/ 412 ITR 545 (Mad)(HC)

2337 **S. 194A : Deduction at source-Interest other than interest on securities-Interest on compensation awarded by Motor Accidents Claims Tribunal is wholly exempt-Amendment of section 194A(3) (ix), Art. 226, Motor Accident Claims Tribunal.]**
Allowing the petition the Court held that sub-clause (ix) of sub- section (3) of section 194A, stipulates such exemption from deduction of tax, from the interest income,

when the aggregate amount of such income credited or paid during the financial year exceeds Rs. 50,000. Section 194A(3)(ix) has been substituted with effect from June 1, 2015 providing for exemption in respect of "income credited by way of interest on the compensation amount awarded by the Motor Accidents Claims Tribunal". On the provision coming into force from June 1, 2015, no tax can be deducted even on the interest component. Court also observed that the Tribunals have to follow proper procedure for refund, if the claimant does not have income in excess of the taxable limit under the Income-tax Act.
New India Assurance Co. Ltd. v. CIT (2024)460 ITR 624 /341 CTR 437 / 242 DTR 572 (Pat)(HC)

S. 194A: Deduction at source-Interest other than interest on securities-No liability on reimbursement of interest paid through group companies which is not constituting income is not liable to deduct tax at source. [S. 201(1), 201(IA)] 2338
Held that reimbursement which do not constitute income do not trigger TDS obligation. Accordingly, no liability on reimbursement of interest paid through group companies which does not constite income, is not liable to deduct tax at source. Therefore, proceedings initiated under sections 201(1) and 201(IA)) are quashed. (AY. 2016-17, 2017-18, 2018-19, 2019-20, 2020-21) (ITA Nos 5305, 5225, 5354, 5356 & 5357 / Mum/2024 dt 27-11 2024)
KD lite Developers Pvt Ltd v. DCIT, TDS (2024) Chamber's Journal- December-104 (Mum) (Trib)

S. 194A : Deduction at source-Interest other than interest on securities-Excess interest retained by nonbanking financial companies-loans purchased by bank-Upfront payment and allowing the originating NBFCs to retain part interest on such loan paid by the borrowers-No obligation to deduct tax at source-NBFCs have already offered to tax in their returns of income the interest earned on loans sold to the assessee-Levy of tax under section 201 (1) and levy of interest u/s 201(IA) for failure to deduct u/s 194A, 194H or 194J is not applicable. [S. 2(28A 194A, 194H, 194J 201(1), 201(IA)] 2339
Tribunal held that the assessee had only purchased a part of the loan by making the upfront payment and allowing the originating NBFCs to retain part interest on such loan paid by the borrowers. There is no material available on record to show that the assessee borrowed any funds or incurred any debt from the NBFC. Therefore, in the absence of any funds borrowed or debt incurred by the assessee from the NBFC, the part interest allowed to be retained back by the originating NBFC cannot be said to be interest within the meaning of S. 2(28A). Under S. 194A, the payment must be in the nature of interest in order to make the payer responsible for deducting tax at the time of payment or credit of such income. Therefore, though the payment by the borrower of the loan, in the nature of interest, when the same is allowed to be retained with the originating NBFC by the assessee under the tripartite agreement, the nature of the same is converted into a consideration for the purchase of 90 per cent of the pool of assets. The nature of income in the hands of the recipient and the nature of expenditure of said sum by that person may not always be the same. Therefore, it is not necessary that what is received as interest is also interest when paid, particularly in the absence of any

money borrowed or debt incurred. Accordingly, there is no obligation on the assessee to deduct tax at source under S. 194A. Accordingly levy of tax under S 201(1) and levy of interest under S. 201(1A) for non-deduction of TDS under S. 194A is not sustainable. As the assessee has purchased a pool of loans from NBFC by way of direct assignment of part interest allowed to be retained back by the originating NBFC cannot be said to be interest within the meaning of section 2(28A). Therefore, no liability to deduct tax at source under S. 194A. Since the NBFC was not acting as an agent of the assessee in respect of loans advanced to the borrowers, the provisions of S. 194H are also not applicable. (AY. 2012-13 to 2019-20)
State Bank of India v. DCIT (2024) 229 TTJ 721 / 239 DTR 129 / 38 NYPTTJ 606 (Mum) (Trib)

2340 **S. 194A : Deduction at source-Interest other than interest on securities-Kachha Arhatia-No domain over goods sold principal buyers-Tax deducted under section 194Q by principal buyers could not be refused by invoking rule 37A. [S. 194H, 1994Q, R. 37BA]**
Assessee, a Kachha Arhatia, who is engaged in selling agriculture produce on behalf of farmers to principal buyers. He filed return of income claiming tax deducted at source under sections 194A, 194H and 194Q. Assessing Officer disallowed TDS credit of certain amount by invoking rule 37BA. CIT(A) affirmed the order of the AO. On appeal the Tribunal held that since receipts of interest and commission on which tax had been deducted under sections 194A and 194H respectively were fully declared in income tax return, entire tax deducted under sections 194A and 194H is directed to be allowed. The tribunal also held that since assessee had no domain over goods sold to principal buyers, tax deducted under section 194Q by principal buyers could not be refused by invoking rule 37BA and it deserved to be fully allowed. (AY. 2022-23)
Kamlesh Kumar Jain v. Dy. CIT (2024) 209 ITD 291 (Jaipur) (Trib.)

2341 **S. 194C : Deduction at source – Contractors – External Development Charges – Payments to Urban Development Authority – TDS applicable even in absence of formal contract – Arrangement with State authority sufficient – Statutory authority is not "Government" and not immune under Art. 289 – Failure to deduct tax attracts liability u/s. 201, though penalty saved by reasonable cause – Reassessment notices based on s. 194C quashed. [S. 147, 148, 190, 196, 197, 201, 221, 271C, 273B, Art. 226, 289]**
Assessee contended that no TDS was deductible on external development charges paid to a statutory authority as there was no privity of contract and the authority was part of the State. The High Court held that s. 194C does not require a formal contract; an arrangement suffices. Payments to statutory authority are not exempt as it is not "Government" for Art. 289 or s. 196 purposes. However, penalty cannot be automatic where taxability remained unclear and reasonable cause existed. Reassessment notices under s. 147/148 based solely on applicability of s. 194C were quashed, though liberty was given to the Department to proceed under s. 201 afresh.
Puri Constructions Pvt. Ltd. v. Add. CIT (2024) 462 ITR 326 / 337 CTR 625 (Delhi)(HC)

S. 194C: Deduction at source-Contractors-Technical services- Processing of milk attracts deduction of tax at source under section 194C at 2 per cent is rightly deducted-Order of Tribunal is affirmed. [S. 40(a)(ia), 194J, 260A] 2342

The assessee, engaged in the business of selling milk and milk products, made payments to a dairy for conversion of raw milk into processed milk and milk products. It deducted tax at source @2% under section 194C treating payments to be contract payments. However, the assessing officer made disallowance under section 40(a)(ia) holding that the payments were in the nature of payments for technical services and therefore, tax should have been deducted @10% under section 194J. However, the Commissioner of Income-Tax (Appeals) deleted the disallowance made by the Assessing Officer. On appeal by Revenue, the Hon'ble Tribunal upheld the CIT (A) order and held that the CIT(A) has rightly deleted the disallowance made by the Assessing officer. On appeal by the Department, the Hon'ble Gujarat High Court held that the Hon'ble Tribunal relied on the decision of the co- ordinate Bench in the assessee's own case wherein, relying on CBDT Circular No. 13/2006 dated 13 December 2006(2006) 287 ITR 174 (St) wherein it held that the services provided by the dairies are in the nature of job work which falls within definition of 'work' under section 194C. The services are neither technical nor managerial nor consultancy since the dairies are not assigned any exclusive work relating to quality check and therefore, the main and basic nature of transaction of conversion/processing of milk on job work basis does not lose its true characteristic. Accordingly, the Department's appeal is dismissed.

PCIT v. Maahi Milk Producer Co. Ltd. (2024) 460 ITR 222 (Guj) (HC)

S. 194C : Deduction at source-Contractors-Work contracts-Payments for testing and commissioning of BTG and to CIPL for installation and commissioning of BOP-Rightly deducted under section 194C and not under section 194J. [S. 194J, 201] 2343

The AO view that payments were made to BHEL for testing and commissioning of BTG and to CIPL for installation and commissioning of BOP and since said services were technical, the tax was to be deducted u/s. 194J. He passed the order u/s. 201 and held assessee to be in default for short deduction of TDS and consequently, raised demand. CIT(A) up held the order. Tribunal deleted the addition. On appeal the High Court Held that, element of testing and commissioning of technical works etc. were part of main contract-to set up a thermal power plant including therein work of transportation, insurance, erection, installation, testing and commissioning of BTG and also commissioning of BOP, in absence of any internal tool arising therefrom and in absence of any legal provision allowing AO to break down composite nature and character of the contract. The Contracts executed with BHEL and CIPL were indivisible contracts for BTG and BOP, respectively. The dominant object of the contract could not be overlooked, and thus, TDS was required to be made u/s. 194C and not under section 194J. (AY. 2012-13, 2013-14, 2015-16)

CIT (TDS) v. Lalitpur Power Generation Co. Ltd. (2024) 296 Taxman 372 / 336 CTR 239 (All)(HC)

CIT v. Bajaj Energy (P) Ltd (2024) 296 Taxman 372 / 336 CTR 239 (All)(HC)

CIT v. Bajaj Infrastructure Development Co. Ltd (2024) 296 Taxman 372 / 336 CTR 239 (All)(HC)

2344 **S. 194C : Deduction at source-Contractors-Freight charges to transporters on behalf of third party under tripartite agreement- Provision is not attracted. [S. 201(1), 201(IA)]**
CIT (A) up held the order of the Assessing Officer for failure to deduct tax at source on payment made to Truck owners. On appeal the Tribunal held that the assessee raised separate invoices on behalf of truck operator union and received the freight payment agreed between PIH (P) Ltd. and truck operator union and passed on this payment to the truck operator union as per the tripartite agreement to this limited extent of raising the invoices and subsequently making the payment, it also acted as an agent for the truck operator union/truck owners. The Tribunal held that the assessee basically acted as an intermediary between PIH (P) Ltd. and truck operator union/truck owners. Accordingly, the responsibility to deduct TDS from the payments made to the truck operator union is that of PIH (P) Ltd. and not that of the assessee. Accordingly, the provisions of s. 194C are not attracted to the disbursal of freight payments made by the assessee to the truck operators union/truck owners. (AY. 2016-17)
ITO v. S. A. Singh & CO (2024) 227 TTJ 561 / 240 DTR 250 (Chd)(Trib)

2345 **S. 194H : Deduction at source-Commission or brokerage-Payment from distributor to assessee had no link with further sale made by distributor-Not liable to deduct tax at source-High Court affirmed the order of the Tribunal-SLP of Revenue is dismissed. [Art. 136]**
Assessee was a manufacturer of computers and peripherals. It supplied its product to distributors. Assessing Officer held that as assessee had paid money to distributors therefore, it amounted to commission liable to TDS. On appeal, Commissioner (Appeals) held that in order to ensure that sale of product was not adversely affected by unfavorable market changes, assessee had suggested distributors to sell products at price less than the actual price mentioned in invoices raised by assessee. Further, such contingencies arose on several occasions due to festival discounts, sudden change in market value, introduction of similar products etc. and distributors sold product at their risk to dealers. High Court by impugned order held that in view of factual findings recorded by Commissioner (Appeals) that payment from distributor to assessee had no link with further sale made by distributor. Hence affirmed the order. High Court affirmed the order of the Tribunal. SLP of Revenue is dismissed. Followed *CIT (TDS) v. Acer India (P.) Ltd. [2024] 298 Taxman 748/463 ITR 676 (SC)*. (AY. 2012-13, 2015-16)
CIT (TDS) v. Acer India (P.) Ltd. (2024) 300 Taxman 110 (SC)
Editorial : CIT (TDS) v. Acer India (P.) Ltd(2023) 156 taxmann.com 664/ 463 ITR 671 (Karn)(HC)

2346 **S. 194H : Deduction at source-Commission or brokerage- Distributors-Payment from distributor had no link with further sale made by distributor, said payment could not be treated as commission or brokerage as described in Explanation to section 194H-SLP of Revenue is dismissed. [Art. 136]**
Assessee is a manufacturer of computers and peripherals. It supplied its product to distributors. Assessing Officer held that as assessee had paid money to distributors therefore, it amounted to commission liable to TDS. On appeal, Commissioner (Appeals) held that in order to ensure that sale of product was not adversely affected by unfavorable market changes, assessee had suggested distributors to sell products

at price less than actual price mentioned in invoices raised by assessee. Further, such contingencies arose on several occasions due to festival discounts, sudden change in market value, introduction of similar products etc. and distributors sold product at their risk to dealers. Tribunal affirmed the order of CIT(A). High Court held that, in view of factual findings recorded by Commissioner (Appeals) that payment from distributor to assessee had no link with further sale made by distributor and same having been confirmed by Tribunal, said payment could not be treated as commission or brokerage as described in Explanation to section 194H. SLP dismissed. Followed, CIT (TDS) v. Acer India (P.) Ltd. [2024] 298 Taxman 748/463 ITR 676 (SC), SLP filed against impugned order of High Court was to be dismissed. (AY. 2012-13, 2015-16)

CIT (TDS) v. Acer India (P.) Ltd. (2024) 298 Taxman 748 / 463 ITR 676 / 300 Taxman 110 (SC)

Editorial : CIT (TDS) v. Acer India (P.) Ltd. (2023) 156 taxmann.com 664 / 463 ITR 671 (Karn)(HC)

S. 194H : Deduction at source-Commission or brokerage-Discount price-Franchisees or distributors at discount price-Assessee Cannot be made to ask for information from franchisee or distributor and deduct tax at source-Not under obligation to deduct tax at source on income or profit component in payments received by franchisees or distributors from third parties or customers, or while selling or transferring prepaid coupons or starter-Kits to distributors-Not liable to deduct tax source-Obligation to deduct tax at source arises only when legal relationship of Principal-Agent is established-Obligation and time and manner in which tax to be deducted at source, fixed by statute which cannot be modified or postponed on concession by Department-Servant-Distributor-Franchisee-Independent Contractor [S. 119, 204, Contract Act, 1872, S. 186] 2347

Held that while the prepaid SIM cards were not the property of the franchisees or distributors and no right, title or interest was transferred to them, this was a mandate and requirement of the license issued to the assessees by the Department of Telecommunications. In actual practice, the right to use the SIM card and its possession was handed over and given to the end-user, who installed the SIM card in his phone to avail of the telecommunications services. Similarly, the franchisees or distributors had to ensure that post-paid customers or end-users filled up the form as prescribed with the documents to be submitted to the assessees. These were mandates prescribed by the license issued by the Department of Telecommunications to the assessees. The contractual obligations of the franchisees or distributors, did not reflect a fiduciary character of the relationship, or the business being done on the principal's account. Held that the profits of the franchisees or distributors consisted of the difference between the sale price received by them from the retailer, end-user or customer and the discounted price at which they had "acquired" the product. Though the discounted price was fixed or negotiated between the assessees and the franchisees or distributors, the sale price received by the franchisees or distributors was within the sole discretion of the franchisees or distributors. The assessees had no say in this matter. The obligation to deduct tax at source was fixed by the statute itself, that is, on the date of actual payment by any mode, or at the time when income was credited to the account of the franchisees or distributors, whichever was earlier. The income of the franchisees or distributors, being the difference between the sale price received by the franchisees

or distributors and the discounted price, was paid or credited to the account of the franchisees or distributors when they sold the prepaid product to the retailer, end-user or customer. The sale price and accordingly the income of the franchisees or distributors was determined by the franchisees or distributors and the third parties. Accordingly, the assessee did not, at any stage, either pay to, or credit the account of the franchisees or distributors with, income by way of commission or brokerage on which tax at source under section 194H of the Act was to be deducted. Held that the assessees neither paid nor credited any income to the person with whom they had contracted. The assessees were not privy to the transactions between the franchisees or distributors and third parties. It was, therefore, impossible for the assessees to deduct tax at source and comply with section 194H of the Act, on the difference between the total consideration received by the distributors or franchisees from third parties and the amount paid by the distributors or franchisees to them. The Department's contention that even if the franchisees or distributors received payment in the form of income from the retailer or end-user or customer, and the assessees were not making payment or crediting income to the account of the franchisees or distributors, the assessees would be liable to deduct tax at source as payment received or receivable, directly or indirectly, was to be subjected to deduction of tax, was not tenable. Held, the argument of the Department that the assessees should periodically ask for this information and thereupon deduct tax at source was far-fetched, imposing an unfair obligation and inconveniencing the assessees, beyond the statutory mandate. Further, it would be well-nigh impossible to deduct, as well as make payment of the tax deducted, within the time limits prescribed by law, as these began when the amount was credited in the account of the payee by the payer or when payment was received by the payee, whichever was earlier. The payee received payment when the third party made the payment. This payment was not the payment received or payable by the assessee as the principal. The distributor or franchisee was not the trustee who was to account for this payment to the assessee as the principal. The payment received was the gross income or profit earned by the distributor or franchisee. It was the income earned by the distributor or franchisee as a result of its efforts and work, and not a remuneration paid by the assessee as a cellular mobile telephone service provider. Held that, therefore, the assessees were not under a legal obligation to deduct tax at source on the income or profit component in the payments received by the franchisees or distributors from the third parties or customers, or while selling or transferring the prepaid coupons or starter-kits to the distributors. Section 194H of the Act was not applicable to the facts and circumstances of this case. (AY. 2003-04 to 2008-09)

Bharti Cellular Ltd. v. ACIT (2024)462 ITR 247/298 Taxman 552/ 337 CTR 555 (SC)

Editorial : Decisions in Bharti Cellular Ltd v. ACIT (2013) 354 ITR 507 (Cal)(HC), reversed. Bharti Airtel Ltd v. Dy. CIT (2015) 372 ITR 33 (Karn)(HC)

2348 **S. 194H : Deduction at source-Commission or brokerage-Agreement with distributors/ franchisees for sale of their prepaid products-Not liable to deduct tax at source-Order of Tribunal is set aside. [S. 260A]**

Assessee, telecom service provider, entered into agreements with distributors/franchisees for sale of their prepaid products. Assessing Officer held that the assessee is liable to

deduct tax at source under section 194H on amount which was in nature of commission payable to an agent by assessee under franchise / distributorship agreement. CIT(A) and Tribunal up held the order. On appeal the Court held in assessee's own case in *Bharti Cellular Ltd. v. Asstt. CIT [2024] 160 taxmann.com 12/298 Taxman 552/462 ITR 247 (SC)*, that contractual obligations of distributors/franchisees did not reflect a fiduciary character of relationship, or business being done on principal's account, hence, assessee would not be under a legal obligation to deduct tax at source on income/profit component in payments received by distributors/franchisees from third parties/customers, or while selling/transferring prepaid coupons or starter- kits to distributor. Following the ratio the Court held that the assessee is not liable to deduct tax at source under section 194H of the Act. (AY. 2008- 09, 2009-10)
Bharti Airtel Ltd. v. ACIT (TDS) 300 Taxman 245 (Bom.)(HC)

S. 194H : Deduction at source-Commission or brokerage- Manufacturer of computers and peripherals-Sale of products by distributor at price less than invoice price after products reached distributor and after raising of invoices-Principal to Principal and not that of principal to agent-Assessee is not in default-Order of Tribunal is affirmed. [S. 201(1), 201(IA), 260A] 2349

Held, dismissing the appeals the Court held that the payments from the distributor to the assessee had no link with the further sales made by the distributor. The decision to sell the products at a price less than the invoice price was taken after the products had reached the distributor and after the invoices were raised by the assessee. The distributor was liable for making payment of full invoice value. The Commissioner (Appeals) had recorded that reduction in price by the distributor was to overcome unfavorable market changes and special occasions on which discount was given to the purchasers of computers and peripherals. He had rightly recorded that the distributors were required to place the purchase order under the agreement and the assessee reserved the right to accept or reject any order. The inventory risk after acquiring the product was that of the distributor. The facts recorded by the Commissioner (Appeals) that payment from the distributor to the assessee had no link with the further sale made by the distributor had been confirmed by the Tribunal as the last fact finding authority. The Tribunal was right in confirming the order of the Commissioner (Appeals) cancelling the order passed under section 201(1) and (1A). (AY. 2012-13, 2015-16)
CIT (TDS) v. Acer India Pvt. Ltd. (2023) 156 taxmann.com 664 / (2024)463 ITR 671 (Karn) (HC)
Editorial : SLP dismissed, CIT (TDS) v. Acer India Pvt. Ltd. (2024)463 ITR 676/300 Taxman 110 (SC)

S. 194H : Deduction at source-Commission or brokerage-Discount- Deducted taxes at appropriate rates at time of giving trade discount/commission to it's agents-Cannot be held to be an assessee-in-default-Matter remanded to the file of CIT(A). [S. 194C, 194J, 201(1), 201(IA)] 2350

Assessee is a public sector undertaking, which is engaged in business of telecom operations and providing telecom services. During year, assessee sold prepaid vouchers and cards of various face value to distributors at lower rate than its face value.

Assessing Officer treated difference between face value of prepaid vouchers and amounts actually received by assessee on distribution of prepaid vouchers as commission paid to distributors and passed order under sections 201(1)/201(1A) holding that assessee was an assessee-in-default on account of non-deduction of tax at source under section 194H. Commissioner (Appeals) upheld order of Assessing Officer. Assessee filed rectification application and submitted that it had already deducted tax at source at appropriate rates on such discounts/commission given to its agents, hence could not be held to be an assessee-in-default for non-deduction of tax at source under section 194H. On appeal the Tribunal held that Department not having analyzed this aspect/contention of assessee, matter is restored to file of Commissioner (Appeals) for carrying out necessary verification as to whether assessee had deducted tax at source on such discounts/ commissions given to its agents or not. (AY. 2009-10)
Bharat Sanchar Nigam Ltd. v. DCIT (2024) 205 ITD 318 (Rajkot) (Trib.)

2351 **S. 194I : Deduction at source-Rent-Agreement with State Government for Development-External development charges-Not in the nature of rent-Tax not deductible at source on such charges - Order of High Court is affirmed-SLP of Revenue is dismissed. [S. 201(1), 201(IA), Art. 136]**
The Assessing Officer had held that tax was liable to be deducted at source under section 194-I of the Act, and he had also proceeded to analyse the section and hold that external development charges were in the nature of rent. He had, in addition, also applied the rate of 10 per cent for assessing the assessee's liability. Court held that the approach of the Revenue was flawed. The contention that the findings of the Assessing Officer regarding the nature of the external development charges as well as at the provisions referred by him for determining the assessee's liability were not material, was erroneous. The orders passed by the Assessing Officer raising a demand under section 201(1) and (1A) of the Act were liable to be quashed. SLP of Revenue is dismissed.
Jt. CIT (OSD) v. DLF Homes Panchkula (P.) Ltd. (2024) 298 Taxman 744 (SC)
Editorial : DLF Homes Panchkula (P.) Ltd v. Jt. CIT (OSD)(2023) 149 taxmann.com 176/ 459 ITR 773 / 333 CTR 754 / 226 DTR 1 (Delhi)(HC)

2352 **S. 194I : Deduction at source-Rent-Storage charges-Storage tanks- Did not qualify either as land or as building-Not liable to deduct tax at source. [S. 201(IA), (260A]**
Dismissing the appeal of the Revenue the Court held that storage tank did not qualify either as land or as building within meaning of section 194I, hence, the payment was not liable for deduction of tax at source. (AY. 1997-98, 1998-99)
CIT (TDS) v. B. Arunkunar Trading Ltd (2024) 297 Taxman 567 /465 ITR 748/339 CTR 49 (Bom)(HC)

2353 **S. 194I : Deduction at source-Rent-Alternative accommodation- Transit rent-Developer or Builder-Development agreement-Hardship Allowance / Rehabilitation Allowance / Displacement Allowance- Not revenue receipt-Not liable to tax-Not liable to deduct tax at source. [S. 4, Art. 226]**
On a writ the issue before the Court was as to whether there should be deduction of TDS on the amount payable to Petitioner as "Transit Rent", by the developer. The

Honourable Court held that the ordinary meaning of Rent would be an amount which the Tenant / Licensee pays to the Landlord / Licensor. In the present proceedings the term used is "Transit Rent", which is commonly referred as Hardship Allowance / Rehabilitation Allowance / Displacement Allowance, which is paid by the Developer / Landlord the tenant who suffers hardship due to dispossession hence the 'Transit Rent' is not to be considered as revenue receipt and is not liable to be tax, as a result there will be no question of deduction of TDS. from the amount payable by the Developer to the tenant. Referred the Judgements of the Tribunal in *Delilah Raj Mansukhani (Smt) ITA No. 3526/MUM/2017 dt. 29-1-2021 (AY.. 2010-2011), Ajay Parasmal Kothari in ITA No. 2823/MUM/dt. 3-4-2023 (AY 2013-2014) (2024) 159 taxmann.com 570 (SMC) (Mum) (Trib) (WP No. 2054 of 2024 dt. 15-4-2024)*
Sarfaraz S. Furniturewalla v. Afshan Sharfali Ashok Kumar & Ors. (2024) 339 CTR 75/ 166 taxmann.com 425/ 467 ITR 230 / 238 DTR 99 (Bom)(HC)
Editorial : Refer, Narayan Devarajan Iyengar v. ITO [2023] 201 ITD 503 (Mum)(Trib)

S. 194I : Deduction at source-Rent-Alternative accommodation- Hardship allowance-Payments made to tenants of a Co-Operative housing society towards alternative accommodation charges /hardship allowance rent are not liable to deduct tax at source. [S. 132A(2A)] 2354
Held that Payments made to tenants of a Co-Operative housing society towards alternative accommodation charges /hardship allowance rent are not liable to deduct tax at source. (AY. 2013-14 & 2016-17) (ITA Nos. 4088 / 4087, 4100/4101/Mum/2023 dt 21-5-2024)
ITO v. Nathani Parekh Constructions Pvt Ltd (2024) BCAJ-August-P. 46 (Mum)(Trib)

S. 194I : Deduction at source-Rent-Shop in a mall on rent-Common area maintenance (CAM)-Charges are separate and distinguishable services-The applicable rate of TDS is 2 per cent under section 194C and not 10 percent under section 194I. [S. 194C] 2355
The assessee-company is engaged in the business of manufacturing and trading of readymade garments. For the purpose of carrying out its business, the assessee had taken on lease a unit/shop in a mall. During the year under consideration, the assessee had paid rent, Common Area Maintenance ('CAM') and miscellaneous amenity charges to the payee. During the subject assessment year, the assessee had deducted TDS on payments for lease of business premises at the rate of 10 per cent under section 194-I. Further, the payments for CAM services were subject to TDS at the rate of 2 per cent under section 194C. The Assessing Officer held that TDS should be deducted on payment of CAM under section 194I treating the same as payment of rent instead of TDS deducted by the assessee under section 194C. CIT(A) has up held the order of the AO. The Tribunal held that the CAM charges paid are for separate and distinguishable services and cannot be said to be for use of building. The applicable rate of TDS is 2 per cent under section 194C and not 10 percent under section 194I. (AY. 2011-12)
Benetton India (P) Ltd v. JCIT (2024) 167 taxmann.com 76 (Delhi)(Trib)

2356 **S. 194I : Deduction at source-Rent-Could not be said in default towards non-deduction of TDS on lease rent paid to NOIDA Authority on basis of decision in Rajesh projects (India)(P.) Ltd v. CIT(TDS) (2017) 78 taxmann.com 263/ 392 ITR 483 (Delhi)(HC). [S. 201(1), 201(IA)]**

Assessee is held as assessee in default towards non-deduction of TDS on lease rent paid to NOIDA Authority keeping in view decision of High Court in *Rajesh Projects (India) (P.) Ltd. v. CIT(TDS)) (2017) 78 taxmann.com 263/ 392 ITR 483 (Delhi)(HC)* that it was not correct to say that NOIDA Authority was not subjected to TDS provisions on lease rent and, thus, payer was under statutory obligation to deduct TDS under section 194-I. CIT(A) up held the order of the AO. On appeal the Tribunal held that High Court in its wisdom had restricted applicability of conclusion drawn with prospective effect. Therefore, cause of action under section 201(1)/201(1A) in pursuance of above judgment of High Court is not available to revenue for assessment year 2012-13. Therefore, order passed under section 201(1) and 201(1A) is set aside. (AY. 2012-13)

Mahagun (India) (P.) Ltd. v. ACIT (2024) 209 ITD 236 (Delhi) (Trib.)

2357 **S. 194J : Deduction at source-Fees for professional or technical services-Hospital-Consultation charges to doctors-Not salary- Deduction of tax under section 194J is proper-Not in default. [S. 192, 201(1), 201(IA)**

Held that the consultancy charges paid to doctors is not salary, following the Tribunal order passed in the assessee's own case for the assessment year 2009-10. Order of CIT(A) is affirmed. Deduction of tax under section 194J is proper. The assessee is not in default. (AY. 2012-13)

Asst. CIT (TDS) v. Artemis Medicares Services Ltd. (2024)109 ITR 84 (SN)(Delhi) (Trib)

2358 **S. 194LA :Deduction at source-Compensation on acquisition of certain immoveable property –Agricultural land-Urban land- Apparent contradiction in stands taken by all government authorities who were part of same hierarchy-Matter is remanded back to Commissioner (Appeals) to arrive at a conclusion by examining authorities concerned. [S. 2(14), 201(1), 201(IA)]**

District Land Acquisition Officer (DLAO) paid compensation to various parties on account of land acquisition by government. Assessing Officer held that TDS under section 194L was attracted as said land was urban in nature. Accordingly, TDS was worked out and interest were charged in terms of section 201(1) and 201(1A) for failure to deduct TDS. However, Commissioner (Appeals) deleted addition by mainly relying on reports of other District Administrations, who had certified distance of said agricultural lands beyond 2 KMs range. On appeal the Tribunal held that the Assessing Officer had fortified his conclusion based on reply of Executive officer, Nagar Panchayat, Khunti wherein it had been stated that aerial distance of impugned land being part of a project-'Knowledge City', was 1. 5 km from Khunti Nagar Panchayat which was apparently within two km limit as per clause b(i) to section 2(14). There was apparent contradiction in stands taken by all government authorities, evidently being part of same hierarchy, it was incumbent on Commissioner (Appeals) to clearly bring on record basis of their respective claims. Since Commissioner (Appeals) had considered a one-sided version to be correct, matter is remanded back to Commissioner (Appeals) to arrive at a conclusion

by examining authorities concerned, so as to find out actual basis for their respective contentions. (AY. 2013-14 to 2016-17)
ITO, TDS v. District Land Acquisition Officer. (2024) 209 ITD 185 (Ranchi) (Trib.)

S. 194LBC : Deduction at source-Investment in securitization trust- Assessee in default-Excess Interest Spread by securitization trust group-Pass through certificates by originator-No liability to deduct TDS from the payment of Excess Interest Spread by securitization trust-Not an assessee in default. [S. 115TCA, Explanation (d), 201(1)] 2359
For failure to deduct at source the assessee is treated as assessee in default and passed an order levying interest under section 201(IA) of the Act. The order of AO is affirmed by CIT(A). On appeal the Tribunal held that, it is only in a situation where the originator has subscribed to the Pass Through Certificates (PTCs) of the securitization trust that it can be regarded as an investor within the meaning of S. 115TCA, Expln. (d). Once the originator has not subscribed in PTCs, but the Minimum Retention Requirement (MMR) is maintained via cash collateral and in the form of collateralizing of excess receivables, then the first condition provided in S. 194LBC is not fulfilled. On the facts the originator i. e., AMPL is not holding any PTCs/SDI, it cannot be regarded as investor as defined in cl. (d) of Explanation to S. 115TCA. Tribunal also held that since the cash flow received was to be utilized in the manner provided in the water flow mechanism of the trustee, the Excess Interest Spread (EIS) is the residual amount that flows to the originator and is not pursuant to any investment in the securitization trust or return of investment so made. Payment was not in respect of investment made by AMPL in the PTCs issued by the assessee. Surplus represents a reward earned by AMPL for its effort of creating pool of loan receivables which is capable of assigning. MRR requirement was introduced by RBI for the first time in the year 2012 and prior to that there was no requirement for the originator to comply with MRR which further corroborates that EIS cannot be regarded as income in respect of investment. There is no liability to deduct TDS under s. 194LBC from the payment of EIS. The assessee cannot be treated as an assessee in default. Levy of interest u/s 201(IA) is deleted. (AY. 2018-19)
Vivriti Cibus 013 2017 v. ITO [2023] 157 taxmann.com 273/37 NYPTTJ 1641 / (2024) 227 TTJ 1 / 233 DTR 188 (Mum)(Trib)

S. 194LBC : Investment in securitization trust-Deduction of tax at source-Payment to originator, as per RBI guidelines-Originator was neither a holder of any securitized debt instrument, securities or security receipts-It could not be regarded as an investor-Payment made to originator was not covered within purview of section 194LBC-Not liable to deduct tax at source. [S. 201(1),201(IA)] 2360
Assessee is a securitisation trust. Assessee had paid an amount under head of Excess Interest Spread (EIS) to originator for relevant year. The AO held that the assessee is obliged to deduct tax from the said amount under S. 194LBC of the Act and treated the assessee as defaulter under S. 2001(1), 201(IA) of the Act. On appeal the CIT (A) held that the assessee cannot be treated as an investor within the meaning of clause (a) Explanation 115TCA as the organisor is neither receipt. On appeal the Tribunal held that there is a clear distinction between originator, who was assignor of loan portfolio to assessee, and PTC holders, who were investors in securitisation trust and since

originator was neither a holder of any securitized debt instrument, securities or security receipts, it could not be regarded as an investor. Therefore, assessee is not obliged to deduct TDS under section 194LBC of the Act. (AY. 2018-19)
ITO (TDS) v. Syamantaka IFMR Capital 2017 (2024) 207 ITD 423 (Mum) (Trib.)

2361 **S. 194N : Payment of certain amounts in cash-Deduction of tax at source-Constitutional validity of provisions-No evidence that assessee was business correspondent-Liable to deduct tax on cash withdrawals-Constitutional validity upheld. [S. 197, Art. 265]**
The assessee contended that section 194N was not constitutionally valid and in any case was not applicable to it. The single judge accepted the plea that section 194N was not applicable to the petitioner. On appeal, allowing the appeal, that the judge had proceeded on the basis of an argument that was, in fact, not advanced by the assessees, holding them to be "business correspondents" of the co-operative societies in disbursal of the Pongal gifts to the banks. This was based on a Government Order in G. O. (2D) No. 66, Co-operation, Food and Consumer Protection (D1) Department dated November 26, 2019, where under, the Government of Tamil Nadu had sanctioned a sum of Rs. 2,363 crores towards Pongal hampers and cash support of Rs. 1,000 to all rice card holders. The Tamil Nadu Civil Supplies Corporation that was appointed as a nodal agency for distribution of the cash support was to co-ordinate with the co-operative societies for the distribution. The conclusion of the judge that the societies had acted as business correspondents of the assessees did not find any support from the records or from any material placed by the assessees. Thus, the conclusion of the judge that the transactions at issue, being cash withdrawals by the societies, and were excluded from the purview of section 194N by virtue of clause (iii) of the third proviso was erroneous.
ITO v. Thanjavur District Central Co-Operative Bank Ltd. v. UOI (2024)465 ITR 286/158 taxmann.com 490 / 336 CTR 513 (Mad)(HC)
Madurai District Central Co-Operative Bank Ltd. v. UOI (2024)465 ITR 286/158 taxmann.com 490 / 336 CTR 513 (Mad)(HC)
Editorial : Decision of the single judge in Tiruneleveli District Central Co-Operative Bank Ltd v. JCIT (2020) 428 ITR 249 / 321 CTR 86/ 202 DTR 61 Mad)(HC) is reversed.

2362 **S. 194N : Payment of certain amounts in cash-Deduction at source- Interest other than interest on securities-co-operative society- Circulars issued by Tamil Nadu State Apex Co-Operative Bank directing assessee-Co-operative society to comply with sections 194N and 194A is valid-Constitutional validity is affirmed. [S. 194A, Art, 226]**
The Assessee,a Co-Operative Society, received deposits and thereafter redeemed the same. They were also engaged in granting loans to its members. Revenue issued notices directing assessee-Co-Operative society to deduct TDS under section 194A for interest income which exceeded Rs. 40,000 and TDS under section 194N for cash withdrawals exceeding Rs. 20 lakhs. Assessee-Co- operative society claimed that they were acting as business correspondents to pass on cash benefits as mandated by State Government to distribute same to farmers to meet out their minimum requirements i. e., to buy fertilizers, etc. and also for providing reliefs such as Pongal,enam, flood relief, etc. and, thus, would be exempt under section 194N. On writ dismissing the petition the Court held that that assessee had not established that they had distributed cash benefits as mandated by State Government to its members as well as non-members in terms of

guidelines of Reserve Bank of India. Active involvement of assessee to act as business correspondents of a State Government for distribution of cash benefits to its members as well as to non-members was not a banking transaction but a transaction other than banking activities in nature. Since Revenue had merely brought to the knowledge of assessee-societies the need to comply with said provisions of sections 194A and 194N, same could not be challenged under article 226 of Constitution of India. Followed, *S. N. 299 Molasi Primary Agricultural Co-Operative Society Ltd (2023) 330 CTR 100/ (2022) 220 DTR 217 (Mad)(HC)*
Chennimalai Siragiri Murugan Primary Handloom Weaver's Cooperative Society Ltd. v. ITO (2023)157 taxmann.com 636 / (2024) 336 CTR 419 / 467 ITR 699 (Mad)(HC)

S. 194N: Payment of certain amounts in cash-Withdrawal of cash in excess of Rs. 1 crore-Representation to Government-The High Court directed the MOF and CBDT to examine representation, call for related details/supporting documents, provide full opportunity of hearing to all stakeholders and pass reasoned order dealing with each contentions in accordance with law and until such exercise is taken, restrain from taking any coercive recovery u/s. 194H of the Act. [S. 119, Art. 226] 2363
The State of Tamil Nadu had filed representations to Minister of Finance and CBDT to grant exemption to PACCS from the provisions of Section 194N of the Act in the similar manner it was granted to commission agent or trader operating under Agriculture Produce Market Committee and registered under related law. The exemption was sought for the reason that the interest spread of PACCS was very marginal and deduction of tax at source would create cash crunch besides, eating all its income. The High Court directed the MOF and CBDT to examine representation, call for related details/ supporting documents, provide full opportunity of hearing to all stakeholders and pass reasoned order dealing with each contention in accordance with law and until such exercise is taken, restrain from taking any coercive recovery u/s. 194H of the Act. (SJ)
A. 2979 Thirumohur Primary Agricultural Co-operative Credit Society Ltd. and Others. v ITO (2024)461 ITR 69 (Mad)(HC)

S. 194N: Payment of certain amounts in cash-Transfer of funds to current account of various Co-Operative Societies-Matter remanded to the file of the CIT(A) 2364
Assessee, a co-operative society carrying on banking business, as per scheme of State Government of Tamil Nadu, transferred Government's funds to current accounts of various co-operative societies maintained with it, who, in turn, had withdrawn amount in cash and distributed cash to ration card holders. Assessing Officer held that the assessee made payment in cash in excess of threshold limits of rupees one crore in each case and held, that it was obliged to deduct tax at source under section 194N. Commissioner (Appeals) affirmed the order of the Assessing Officer. On appeal Tribunal restored the matter to Commissioner (Appeals) for adjudication de novo in light of outcome of disposal of representation made by State Government of Tamil Nadu before Ministry of Finance, Government of India and CBDT seeking exemption for all those Primary Co-operative Credit Societies functioning in State of Tamil Nadu from purview of section 194N. (AY. 2020-21)
Dharmapuri District Central Co-operative Bank Ltd. v. DCIT (TDS) (2024) 204 ITD 240 (Chennai) (Trib.)

2365 **S. 194Q: Deduction of tax at source on payment of certain sum for purchase of goods-Commission agent-licensed chillies commission agent-Acted only as an agent-Turnover would include only gross commission and not sales effected on behalf of his principals-Not eligible to get credit of entire amount deducted as tax at source.**
Assessee is an individual and a licensed chillies commission agent. Assessee claimed credit for entire amount deducted as tax at source under section 194Q. Assessing Officer granted TDS credit only to extent of certain amount and disallowed TDS credit of balance amount. CIT(A) affirmed the order of the AO. On appeal the Tribunal held that assessee acted only as an agent and not as a principal and its turnover would include only gross commission and not sales effected on behalf of its principals hence, eligible to get credit of entire amount deducted as tax at source under section 194Q. The assessee being a commission agent is eligible to get credit of entire amount deducted as tax at source under section 194Q. Followed *Yagneswari General Traders v. ITO in ITA No. 39/Viz/2024 dated 18/03/2024* (AY. 2023-24)
Chilakala Srinivasa Reddy v. ITO (2024) 209 ITD 431 (Visakha) (Trib.)

2366 **S. 195: Deduction at source-Non-resident-Other sums-Computer software manufacturers/suppliers, as consideration for resale/use of computer software through EULAs/distribution agreements-Not royalty-Not taxable in India-OEECD Model Convention-art 12 [S. 9(1)(vi), 9(1(vii), 195(2),201(IA), 260A]**
Held that the amounts paid by resident Indian end-users/distributors to non- resident computer software manufacturers/suppliers, as consideration for resale/use of computer software through EULAs/distribution agreements, is not payment of royalty for use of copyright in computer software, and same does not give rise to any income taxable in India. Therefore, not liable to deduct tax at source.
CIT (LTU) v. Reliance Industries Ltd. (2024) 299 Taxman 488 / (2025) 475 ITR 57 (Bom) (HC)

2367 **S. 195: Deduction at source-Non-resident-Other sums-Fees for technical services-Make available-Order of Authority for Advance Rulings Ruling that payment income of non-Resident liable for deduction of tax at source is set aside-DTAA-India-UK [S. 9(1)(vii), 245Q, art. 7, 13]**
The assessee made payments to its non-resident group company for general business support services under a cost contribution arrangement. The arrangement was that the non-resident company managed its group entities, either directly or through own employees or through its third-party affiliates or vendors. The costs incurred were then allocated to the entities on a cost-to-cost basis. On an application for an advance ruling made by the assessee under section 245Q of the Income-tax Act, 1961, the Authority for Advance Rulings ruled that while providing general business support services, the non-resident entity worked closely with the employees of the assessee and supported and advised them, that the assessee was able to use the know -how or intellectual property generated from the general business support services independent of the service provider and hence the services listed under the agreement were made available to the assessee, that the payments made by the assessee to the non-resident company for the general business support services under the cost contribution arrangement were in the nature of fees for "technical services" within the meaning of article 13(4)(c) of the

Double Taxation Avoidance Agreement between India and the United Kingdom, and hence, constituted income in the hands of the non-resident entity. The Authority ruled that the assessee was under an obligation to deduct tax at source under section 195 on such payments. On a writ petition, allowing the petition, the Court held that the list of services availed of by the assessee related to managerial services not involving anything of a technical nature. The Authority for Advance Rulings had discussed the services appearing in the cost contribution arrangement and had concluded that these activities in a retail business were at the core of retail marketing and hence the advice tendered in taking a decision of commercial nature was a consultancy service. The Authority for Advance Rulings had considered the definition of the word "consultancy" as defined in the dictionary and had observed that a consultant was a person who gives professional advice or services in a specialized field, but had failed to appreciate that the word "consultancy" appearing in the article of the Double Taxation Avoidance Agreement was to be interpreted in the context of consultancy which makes available technical knowledge and not of managerial nature. Therefore, the services availed of by the assessee were not technical services and article 13 was wholly inapplicable in the facts and circumstances. That any service was construable as technical but the true import of the service actually rendered had to be seen and the determination must be made in this context. There was no such discussion in the order of the Authority for Advance Rulings and the finding was based on a generic reference to the meaning of the word "consultancy" as given in the dictionary. The Authority for Advance Rulings had proceeded on conjectures and surmises to render the finding that the list of services mentioned in the cost contribution arrangement was not an exhaustive list and might have included other technical services. That the Authority for Advance Rulings had interpreted the requirements to be satisfied for "make available" based on its own general notion of the term without appreciating the applicable law on the subject and had reached an erroneous conclusion that the services availed of were technical services. Even if it was fees for technical or consultancy services, it could be only where fees were paid in consideration for making available technical knowledge and experience. Therefore, the view of the Authority for Advance Rulings [1] that the non-resident entity had worked closely and advised the employees of the assessee and hence made available the services was not correct and suffered from the fallacy since the cost contribution arrangement continued to operate till date. If the view of Authority for Advance Rulings was correct then the contract would have concluded as once the services and the know-how and skill were transferred to the assessee, the need of continuing to render such services must have ended. The Authority for Advance Rulings had not considered the issue relating to the "permanent establishment" of the non-resident entity and there was no determination on the same though, it was not a subject of reference before it. The order of the Authority for Advance Rulings suffered from legal infirmity and was quashed and set aside. However, the Department was at liberty to take necessary action as available to it in law including as to whether the subject would be covered under article 7 of the Double Taxation Avoidance Agreement and if such proceedings were taken, the time taken in the present proceedings would stand excluded for the purpose of limitation.

Shell India Markets Pvt. Ltd. v. UOI (2024)463 ITR 222 (Bom)(HC)

Editorial : Shell India Markets Pvt. Ltd, in re (2012) 342 ITR 223 ((AAR)/ 2012 SCC OnLine AAR-IT1

2368 **S. 195: Deduction at source-Non-resident-Other sums-TDS on sales commission and sales promotion expenses paid to non-residents-No TDS deductible if non-resident payee does not have a permanent establishment or business connection in India-No tax liability under the Act or DTAA-Disallowance of expenses deleted [S. 5(2)(b), 9(1)(i), 40(a)(ia) 194H]**

The Tribunal allowed the appeals filed by the assessee holding that payments made to non-residents for services rendered outside India were not subject to tax deduction at source (TDS) under Section 195. The assessee had paid commission and sales promotion expenses to non- residents, which the Assessing Officer disallowed under Section 40(a)(ia) for failure to deduct TDS, despite the payees having no business connection or Permanent Establishment (PE) in India. The Tribunal noted that the payments were made for services related to exports, with no income deemed to accrue in India. The Tribunal concluded that the non-resident agents were not liable to Indian tax, and thus, the assessee was not obligated to deduct TDS. Consequently, the disallowance under Section 40(a)(ia) was deleted. (AY. 2012-13)

Orbit Bearing India (P.) Ltd. v. ACIT (2024) 163 taxmann.com 112/112 ITR 47 (SN) (Rajkot)(Trib.)

2369 **S. 195: Deduction at source-Non-resident-Certificate-Survey- Subsequent issue of certificate-Entire remittances that were made to said concern would be non-taxable so far as TDS is concerned- Matter is remanded. [S. 133A, 195(3), 201(IA)]**

During a survey, assessee was found to have made payments to IGTL Solutions (USA) without deducting tax at source under section 195. Assessing Officer treated assessee as in default under section 201(1) and charged interest under section 201(1A). Said decision was upheld by lower authorities. However, on further appeal, High Court noted subsequent issuance of a certificate under section 195(3) exempting IGTL Solutions (USA) from TDS and therefore, remanded matter to Tribunal to consider implications of this exemption. Tribunal held that if contents of certificate issued in section 195(3) were verified and found to be correct and genuine, then consequences would be that remittances that have been made to IGTL Solutions (USA) would be non-taxable so far as TDS was concerned. Therefore, Assessing Officer was directed to cause verification of certificate issued under section 195(3) and if it was found to be genuine, entire remittances that were made to IGTL Solutions (USA) would be non-taxable so far as TDS was concerned, order under section 201(1A) would have no legs to stand. Matter remanded. (AY. 2002-03)

FSL Projects Ltd. v. DCIT (2024) 205 ITD 530 (Hyd) (Trib.)

2370 **S. 195: Deduction at source-Non-resident-Other sums-Resident of Canada entitled to benefit under DTAA-DTAA-India-Canada. [S. 195(2), Art.]**

The Joint Venture had already withheld the tax on payments for technical know-how @ 10% and financial commitment fees @ 15% respectively under Section 195 of the Income-tax Act. The Commissioner allowed the claim to be taxed in accordance with

the provisions of DTAA between India and Canada. On further appeal, the Tribunal held that the assessee was a resident of Canada and entitled to the benefit under DTAA. Thus, there was no infirmity in the decision of the Commissioner appeal. (AY. 2010-11)
Dy. CIT v. Foundation Co. of Canada Ltd. [2024] 109 ITR 590 (Delhi) (Trib)

S. 195: Deduction at source-Non-resident-Other sums- Reimbursement of cost-Matter remanded-DTAA-India-Germany. [S. 9(1)(vii),197, 248] 2371

The assessee remitted payment to its parent company after tax deduction as directed by the Assessing Officer. Assessee filed appeal before CIT(A) under Section 248 of the Act for a declaration that assessee was not liable to deduct tax at source on payment to non-resident.
The CIT(A) rejected the appeal of the assessee. Tribunal held that the assessee though claimed to have reimbursed the cost incurred by the parent company to provide certain common services without any mark-up, the claim was not substantiated. From the agreement it was difficult to ascertain whether they were in the nature of fees for technical services "or" only reimbursement of costs.
Assessee relied upon the Certificate of D and contended that payment made to non-resident was only cost incurred by the parent company without any mark-up. However, the same was not supported by any evidence. Assessing Officer was directed to re-examine the issue as to applicability of Section 195 in respect of payment to non-resident in the light of Cost Sharing Agreement and Certificate issued by D and provisions of Section 9(1)(viii) read with DTAS between India and Germany. Relied: *BASF India Ltd. v. Dy. CIT (IT [2019] 102 Taxmann.com 133 (Mum)(Trib).* (AY. 2015-16, 2016-17, 2017-18)
BASF Catalysts India P. Ltd. v. Dy. CIT [2024] 109 ITR 668 (Chennai)(Trib)

S. 195A: Deduction at source-Net of tax-Technical services-Income deemed to accrue or arise in India-Royalty-UK based university- Agreed to bear Indian taxes-Required to gross-up amount of fees for technical services (FTS) paid to university, for purpose of deducting TDS under India-UK DTAA-SLP dismissed as withdrawn-DTAA-India-UK [S. 9(1)(vi), 9(1(vii), art. 12] 2372

High Court held that where assessee had entered into an agreement with UK based university for the provision of certain technical services for which it had agreed to bear Indian taxes, liability of assessee to deduct TDS under India- UK DTAA from payments made to UK University was to be computed on gross amount of fees for technical services (FTs) paid to University. Further, since obligation to pay tax was on university and assessee in terms of agreement, they had agreed to pay tax, the same had to be necessarily added to income of university and therefore, principle of grossing up had to be applied. SLP filed by assessee against said order was to be dismissed as withdrawn. (AY. 2002-03)
TVS Motor Company Ltd v. ITO (IT) (2024) 298 Taxman 550 (SC)
Editorial : TVS Motor Company Ltd v. ITO (IT) (2018) 258 Taxman 77 /(2019) 413 ITR 171 (Mad)(HC)

2373 **S. 197 : Deduction at source-Certificate for lower rate –Stock options-Salaries-Specified security-Property-Since the assessee did not make any payment towards the ESOPs and continues to retain all the ESOPs even after the receipt of compensation, the entire receipt qualifies as the perquisite and becomes liable to be taxed under the head "Salaries"-Assessee is not entitled to a 'nil' certificate of deduction [S. 2(14), 15, 17(2), 192,, Sale of Goods Act, 1930, Companies Act, 2013, Art. 226]**

On writ the Court held that in order to qualify as a capital asset as per the IT Act, it should be property of any kind held by an assessee, including, as per the legal fiction in Expln. 1 to s. 2(14), rights in or in relation to an Indian company, such as rights of management or control. Shares are indisputably capital assets because they qualify as movable goods under the Sale of Goods Act, 1930 and the Companies Act, 2013 and, consequently, fall within the scope of the expression "any property" in s. 2(14). ESOPs, by contrast, are rights in relation to capital assets, i. e. rights to receive capital assets (shares) subject to the terms and conditions of the ESOP scheme. Since the assessee has no rights in the Indian company of which he is an employee (other than as an employee), Expln. 1 is also not attracted. Assessee, employee of step down subsidiary of FPS, held ESOPs of FPS and received monetary benefit at pre-exercise stage by way of compensation for diminution in value of stock options, since assessee did not make any payment towards ESOPs and continued to retain all ESOPs even after receipt of compensation, entire receipt would qualify as perquisite and would become liable to be taxed under head salaries. (AY. 2024-25)

Nishithkumar Mukeshkumar Mehta v. Dy. CIT (2024) 165 taxmann.com 386/ 341 CTR 395 / 241 DTR 113 / 8 NYPCTR 1003 (Mad) (HC)

2374 **S. 197 : Deduction at source-Certificate for lower rate-Payment to Non-Resident-Reimbursement of cost-to-cost payment-Payment for authorisation to use licensed computer software-No transfer of copyright-Payment not royalty-Duty of Assessing Officer to examine whether income in question chargeable to tax Eligible assessee-Draft assessment order-Rejection of application for certificate of nil deduction of tax based on draft assessment order is not proper- Rejection order is set aside. [9(1)(vi), 144C, 195, Art. 226, R. 28AA(2)]**

Allowing the petition the Court held that while passing the order rejecting the application for certificate for nil deduction of tax at source under section 197, the authority had clearly failed to examine the aspect whether the income in question was chargeable to tax. The authority had clearly confused the issues which arose out of two distinct revenue streams, namely, the one which pertained to the outsourcing of back-end services and the other which pertained to the providing of licensed software copies to group entities subject to reimbursement to the assessee by those entities. The orders in question were essentially founded on the draft assessment order. For the assessment year 2020-21, the objections which had been preferred by the assessee before the Dispute Resolution Panel were rejected and in the final order passed accordingly, the Assessing Officer had held that the revenue received by the assessee was in the nature of royalty. The Tribunal had set aside such order holding that the cost-to-cost reimbursement of price paid towards software usage could not be treated as royalty. The order of the Tribunal was sufficient for the orders in question being quashed and

set aside. That the submissions of the assessee that, the supply or licensing of software could not be treated as royalty, either under the Act or the Double Taxation Avoidance Agreement should not have been negated merely on the basis of a draft assessment order. Consequently, the applications of the assessee under section 197 for grant of nil, withholding tax certificates should be examined afresh in accordance with law bearing in mind the observations made in the judgment. (AY. 2023-24, 2024-25)
Lionbridge Technologies LLC v. Dy. CIT (IT) (2024)465 ITR 454/ 338 CTR 775 (Delhi)(HC)

S. 197: Deduction at source-Certificate for lower rate –Mere assertion that income could not be estimated - cannot be ground for rejection of application for certificate. [R. 28AA, Art. 226] 2375
The provisions of rule 28AA of the Rules cannot be read as stipulating that an assessee, to be eligible to make an application under section 197(1) of the Act, should have necessarily filed returns for preceding four years and paid tax for the preceding assessment year, and that the failure in these regards, or the absence thereof, would create an ineligibility to file an application. The Assessing Officer under section 197(1) of the Act will have to be satisfied objectively that the total income of a recipient justifies either deduction at a rate lower than the rates mentioned in the provisions of section 197(1) of the Act or that no deduction is necessary. This objective satisfaction must be based on the determination of the existing and the estimated liability, and income will have to be determined considering the details mentioned in rule 28AA(2) of the Rules. The Assessing Officer must also be satisfied that issuance of certificate while convenient to the assessee will not adversely affect the Revenue's interest. Court held, that the reasons assigned by the Assessing Officer to say that the assessee would not be eligible for certificate under section 197 of the Act because of the ambiguity surrounding the transactions with the existing concern were not justified. The rejection of application for a certificate under section 197 was invalid. (AY. 2024-25)(SJ)
Bitkuber Investments Pvt. Ltd. v. Dy. CIT (TDS) (2024) 464 ITR 193 /336 CTR 61 (Karn) (HC)

S. 197: Deduction at source-Certificate for lower rate-Income deemed to accrue or arise in India-Fees for technical services-Order denying Nil TDS certificate is quashed and set aside-Matter remanded-DTAA-India-Ireland. [S. 9(1)(vii), Art. 12] 2376
Assessee, a tax resident of Republic of Ireland entered into reseller agreement with SDFC India for sale of its products in India and made application under section 197 to receive payments thereunder with Nil or low TDS. Revenue passed order under section 197 determining TDS rate at 10 per cent on entire estimated receipts on ground that assessee was not selling standard off-the-shelf and non-customized downloadable software and that it was in fact offering a comprehensive service experience or solution with help of technology embedded in software, hence, remittances so received were liable to be taxed as fee for technical services within meaning of section 9(1)(vii) read along with article 12 of India-Ireland DTAA. On writ the assessee contended that SDFC India was appointed as non-exclusive reseller without any technology transfer. Technical assistance and training imparted to SDFC India did not appear to bear characteristics of a conferral of specialised or exclusive technical service and did not constitute either

core or foundational basis of consideration which was received by assessee and there was no transmission of specialised knowledge or skill. Imparting training or educating a person with respect to functionality and attributes of a software or application did not amount to rendering of technical service under DTAA. The order did not proceed on basis of any material or evidence which might have indicated that moneys remitted to assessee could be said to constitute consideration for technical services. Court held that order denying Nil or lower TDS certificate to assessee was to be quashed and set aside, with liberty to revenue to examine issue in light of above observation. Matter remanded.
SFDC Ireland Ltd v. CIT (2024) 298 Taxman 403 /465 ITR 471/ 338 CTR 789 (Delhi)(HC)

2377 **S. 197: Deduction at source-Certificate for lower rate –New TAN- Assessee had deducted TDS at rates prescribed in certificates and had complied with necessary requirements of their deposit and filing of returns, assessee could not be treated as assessee in default merely on ground that certificates had not been issued on subsequent TAN obtained by assesse. [S. 197(2), 204, R. 28AA, Form No. 26Q]**
Assessee-manufacturer shifted to another location after first two quarters of relevant assessment year. Consequently, it obtained new TAN. However, certain suppliers of assessee had applied for lower TDS certificates in advance for transactions pertaining to relevant year. These lower TDS certificates were issued by Assessing Officer (TDS) of respective suppliers and mentioned old TAN of assessee. While processing TDS returns, CPC ignored lower TDS certificates on ground that certificates mentioned old TAN of assessee which was changed. CPC raised demand for short deduction of tax. CIT(A) affirmed the order of the AO. On appeal the Tribunal held that since certificates were in name of assessee-company directing it to deduct TDS at lower rates, merely because, assessee had separate TANs would not render said certificates issued in terms of section 197(2) as redundant resulting in tainting assessee as assessee in default. Since assessee had deducted tax at source at rates prescribed in certificates for each of suppliers and had complied with necessary requirements of their deposit and filing of returns, assessee could not be treated as assessee in default merely on ground that certificates had not been issued on subsequent TAN obtained by the assessee. (AY. 2014-15)
Rotex Manufacturers & Engineers (P.) Ltd. v. DCIT (2024) 207 ITD 726/232 TTJ 536 (Mum) (Trib.)

2378 **S. 197A: Deduction at source-No deduction to be made in certain cases-Co-operative bank-Form No 15G-Incomplete response-Matter remanded to the Assessing Officer to pass a fresh assessment order. [S. 201(1), 201(IA), 251, Art. 226]**
Assessee is a Cooperative Bank which had paid interest to its depositors. While paying interest to depositors, assessee had not deducted tax stating that amount of interest varied between Rs. 25,000 to Rs. 62,000 in case of those citizens who were below age of 60 years and who had produced Form No. 15G. Assessee failed to respond to show cause notices. The Assessing Officer passed the order stating that a reading of representations/replies indicated that assessee had not fully collated information that was required to be furnished prior to show cause notices, although it had furnished few details earlier by e-mail. On writ the Court held that the Assessing Officer ought to have been examined by Assessing Officer while passing impugned assessment orders.

Considering the facts, no useful purpose would be served by directing assessee to file a statutory appeal under section 251 before Appellate Commissioner, although Appellate Commissioner could call for a remand report. Order is set aside and matter remanded to the Assessing Officer to pass a fresh order on merits. (AY. 2016-17 to 2020-21)
Thiruvannamalai District Central Cooperative Bank Ltd v. ITO, TDS (2024) 296 Taxman 448 (Mad)(HC)

S. 199: Deduction at source-Credit for tax deducted-Failure to deposit the tax deducted by the deductor-Deductee cannot be denied the credit for tax deducted. [S. 199(1), 221, 260A, 271C R.] 2379

Dismissing the appeal of the Revenue the Court held that the CBDT is empowered to frame rules that may be necessary to give credit to a person "other than those referred to in sub-s. (1) and sub-s. (2)... " of s. 199- Therefore, S. 199, read in its entirety, does not limit credit only to those deductees whose deductors have deposited the amount with the Central Government. Moreover, the expression "and paid" to the Central Government found in S. 199(1) must be contextualized in the setting in which it is placed, i. e., Chapter XVII, whereby, the sanctions for failing to deposit tax with the Central Government are laid on the payor/deductor. Significantly, Chapter XVII contains provisions for penalizing the payer/deductor when he fails to deposit the tax deducted at source with the Central Government. The Act does not seem to cast a burden on the deductee/payee with regard to the deposit of money, which is retained as tax, by the payer i. e., the deductor. Therefore, insofar as the deductee/payee is concerned, once the payer/deductor, who acts as an agent of the Central Government, has retained money towards tax, credit for the same cannot be denied, having regard to the consequences and the modes available for recovering the said amount from the payer/deductor. Followed *Sanjay Sudan v. ACIT (2023) 331 CTR 797/ 224 DTR 9 (Delhi)(HC).*
PCIT v. Jasjit Singh (2024) 336 CTR 634 (Delhi)(HC)

S. 199: Deduction at source-Credit for tax deducted-Once tax is deducted at source-Though the deductor has not deposited the tax- The Tribunal directed the AO to allow the credit to deductee assessee. [S. 143(1), 205, Form No 26AS] 2380

Tribunal held that once tax has been deducted at source, the dedecutee is entitled to credit for the same, even if the deductor has not deposited the tax. The Tribunal directed the AO to allow the credit of the TDS to the deductee assessee. Relied on Departmental instruction / Circular F. No. 275/29/2014-IT (B) dt. 11th March 2016. office memorandum (AY. 2016-17)(ITA No. 764 /Kol/2023 dt. 7-11-2023)
Vishal Pachisia v. ITO (2024) BCAJ-January-P. 33(Kol)(Trib)

S. 199: Deduction at source-Credit for tax deducted –Income offered in the relevant year-Demerger-Eligible for TDS credit even if the TDS certificates are in the name of the demerged company/ Transferor company. [S. 144C] 2381

Held that the assessee has offered the relevant income even though the TDS certificates were in the name of the demerged company. (AY. 2015-16, 2016-17) (ITA Nos. 7685/ Mum/ 925 /mum / 2021 dt 2-5 2024)
Culver Max Entertainment Pvt Ltd v. ACIT (2024) BCAJ-July-P. 36 (Mum)(Trib)

2382 **S. 199: Deduction at source-Credit for tax deducted-Salary-Matter remanded to the file of CIT(A) for verification. [S. 192, Form no 26AS]**
Tribunal remanded the matter to the file of CIT(A) for decision afresh by giving reasonable opportunity to the assessee to produce the relevant documents, such as appointment letter, salary slips or Form No. 16 or bank statements or any other corroborative evidence to substantiate its claim. (AY. 2018-19, 2019-20)
Ajit Chandrashekar Dighe v. CIT (2024) 230 TTJ 766 / 238 DTR 30 / 167 taxmann.com 529 (Mum)(Trib)

2383 **S. 199: Deduction at source-Credit for tax deducted-Bank confirmation letter-Obtained PAN and claimed TDS credit in revised return-TDS credit could not be denied on procedural ground that TDS was not reflected in Form 26AS due to non-compliance with rule 37BA by third parties. [R. 37BA]**
Assessee, a foreign company, which is engaged in investment activities managed from out of India. Assessee is a beneficial owner of American Depository Receipts (ADRs) of Vedanta Ltd., which were held through a broker. Thereafter, ADRs were compulsorily redeemed by Citibank, acting as depository participant for Vedanta Ltd. Upon redemption, Citibank NA withheld tax at 43. 68 per cent on gross proceeds as assessee did not have PAN. Later, assessee after obtaining PAN filed revised return and claimed TDS credit. Assessing Officer denied the claim of assessee on ground that TDS was not reflected in Form 26AS. Commissioner (Appeals) upheld the order of the AO, on ground that assessee's non-compliance with rule 37BA was a sufficient basis for denial of TDS credit and dismissed appeal. On appeal the Tribunal held that due to absence of assessee's PAN at time of deduction, TDS credit was incorrectly attributed under category 'without PAN' or in name of broker, Credit Suisse AG rather than assessee and this misattribution led to TDS credit not reflecting in assessee's Form 26AS. Upon obtaining a PAN, assessee actively engaged with Citibank NA and Credit Suisse AG to correct TDS attribution. Despite continuous communication and submission of necessary documents, including confirmations, these procedural corrections were not completed in time to reflect in assessee's Form 26AS at stage of assessment. A taxpayer should not suffer due to procedural lapses caused by third parties, especially when taxpayer had acted in good faith and made all reasonable efforts to rectify the situation. Substance of compliance, namely offering income to tax, should take precedence over procedural errors when assessing a taxpayer's entitlement to TDS credit. TDS credit, once deducted, should not be denied based on procedural failures, particularly those not attributable to taxpayer. The assessee is entitled to TDS credit as claimed. (AY. 2022-23)
Testec Asia Ltd. v. DIT (2024) 209 ITD 547 (Ahd)(Trib.)

2384 **S. 199 : Deduction at source-Credit for tax deducted-Credit of TDS in a financial year would be granted only when income corresponding to such TDS is assessed to tax in said financial year-Matter remanded. [Accounting Standard 9 (AS. 9)]**
Assessing Officer added difference to assessee's income, suspecting underreporting. Commissioner (Appeals) upheld AO's decision, requiring assessee to reconcile sales figures and claim TDS credit only when corresponding income was recognized in the same financial year. On appeal the Tribunal held that credit of TDS in a financial year would

be granted only when income corresponding to such TDS is assessed to tax in the said financial year. Further the assessee would be at liberty to approach Assessing Officer for claiming such credit in concerned year in which income was offered and Assessing Officer would allow same in accordance with law. Matter remanded. (AY. 2011-12)
Solutions Integrated Marketing Services (P.) Ltd. v. DCIT (2024) 208 ITD 590 (Delhi) (Trib.)

S. 199: Deduction at source-Credit for tax deducted-Year of allowance of TDS credit-Income offered-Credit is to be granted. [R. 37BA] 2385
Held that where income corresponding to credit was offered to tax by assessee in year under consideration i. e., assessment year 2020-21, credit of taxes deducted thereon was also to be granted in same year. (AY. 2020- 21)
Interglobe Technology Quotient (P.) Ltd. v. ACIT (2024) 207 ITD 360 /114 ITR 611 /230 TTJ 545/240 DTR 1 (Delhi) (Trib.)

S. 200A: Processing of statements of tax deducted at source-Before amendment by the Finance Act, 2015-w. e. f. Ist June 2015 did not permit levy of fee under section 234E, for delay in filing quarterly statements, while processing the quarterly statements. [S. 234E] 2386
Tribunal held that demand raised with reference to section 234E of the Act cannot be countenanced in terms of the pre-amended provision of S. 200A and hence, quashed. Before amendment by the Finance Act, 2015-w. e. f. Ist June 2015 did not permit levy of fee under section 234E, for delay in filing quarterly statements, while processing the quarterly statements. (AY. 2013-14) (ITA No. 634 to 639 / Del / 2024 dt 11-10-2024)
Dream Design and Display India Pvt Ltd v. DCIT (2024) BCAJ- November-P. 48 (Delhi) (Trib)

S. 201: Deduction at source-Failure to deduct or pay-Foreign Remittance-Purchase of subscription-No liability to pay tax in India- Cannot be treated as assessee in default-DTAA-India-Singapore-SLP of Revenue dismissed due to low tax effect. [S. 9(1)(vii), 201(1), 201(IA), 268A, Art. 5, 7, 12(3), 12(4)(a), 12(4)(b)] 2387
The assessee had made foreign remittance to a company Red Hat Singapore without deducting tax at source on ground that payment for purchase of subscription was not taxable as per the provisions of article 7 read with article 5 of the India Singapore DTAA. The Assessing Officer held that the subscription fee was liable to be taxed as 'royalty' within the meaning of section 9(1)(vi) as well as article 12(3) and also taxable as 'fee of technical services' within the meaning of section 9(1)(vi) as well as article 12(4)(a) and article 12(4)(b). Accordingly, assessee was treated as an 'assessee-in- default' under section 201(1) and passed the order. The Commissioner (Appeals) partly allowed the appeal. Tribunal deleted the addition. Court also held that the ITAT also came to the conclusion that assessment should be lawfully made by AO on the payee/recipient. Since that has not been done, the order of AO under section 201(1) read with Section 201(1A) of the Act was unsustainable. Order of the Tribunal is affirmed. *Mahindra & Mahindra Ltd. v. Dy. CIT (2010) 122 ITD 216 / ((2009) 30 SOT 374 /122 TTJ 577 (SB) (Mum)(Trib)* is approved. SLP of Revenue dismissed due to low tax effect. (AY. 2007-08, 2008-09)
CIT (IT) v. Red Hat India (P.) Ltd (2024) 300 Taxman 93 (SC)
Editorial: CIT v. Red Hat India (P.) Ltd (2023) 295 Taxman 247 (Bom)(HC)

2388 **S. 201: Deduction at source-Failure to deduct or pay-Assessee in default-Limitation-Reasonable period-Order of Tribunal holding that order passed by after four years is barred by limitation is not proper, legal or justified-Binding precedent-Matter is remanded to the Commissioner of Income-tax (Appeals)for passing fresh orders. [S. 195, 201(1), 201(IA), 260A]**

Tribunal held that show cause notice issued by Assessing Officer initiating proceedings under section 201(1) against assessee after four years is barred by limitation. On appeal the Court held that there is no specific period of limitation prescribed for initiating a proceeding under section 201(1) and 201(1A), therefore, reasonable period is to depend on facts and circumstances of each case and that neither a period of four years nor a period of one year could be said to be period of limitation for same. Order of Tribunal is set aside. Matter is remanded to the Commissioner of Income- tax (Appeals) for passing fresh orders. Followed *Dr. Reddy's Laboratories Ltd v. Dy. CIT(IT) (2023) 22 ITR-OL 478 (Telangana)(HC).* (AY. 2007-08, 2008-09, 2010-11)

CIT v. Idea Cellular Ltd. (2024) 470 ITR 479 /158 taxmann.com 163 (Telangana) (HC)

2389 **S. 201: Deduction at source-Failure to deduct or pay-Non-resident- Fees for technical services-If the amount is not chargeable to tax in the assessment of recipient the assesseee cannot be held to be assessee is default-Not liable to pay tax and interest-DTAA-India- Singapore. [S. 9(1)(vi), 191, 195, 201(1), 201(IA), Art. 5, 7, 12(4)(b)]**

Dismissing the appeal of the Revenue the Court held that if the amount is not chargeable to tax in the assessment of recipient the assesseee cannot be held to be assessee in default. Hence not liable to pay tax and interest. Order of Tribunal is affirmed. (AY. 2007-08, 2008-09)

CIT (IT) v. Red Hat India Pvt. Ltd. (2023) 295 Taxman 247 / (2024) 470 ITR 173 (Bom) (HC)

Editorial : SLP of revenue dismissed due to low tax effect, CIT (IT) v. Red Hat India (P.) Ltd (2024) 300 Taxman 93 (SC)

2390 **S. 201 : Deduction at source-Failure to deduct or pay-Interest-Tax deduction at source-Failure to deduct tax at source –Capital gains tax-Limitation-Alternative remedy-Writ petition is dismissed-DTAA- India-UK-Strictures-Observations made by the Assessing Officer is directed to be expunged within two days and directed the ASG to take appropriate measures. [S. 45, 158(2),195, 201(1), 201(IA), Art. 14, Art. 226]**

Dy. CIT passed an order under S 201 wherein it is held that the purchase of intellectual property amounted to sale of an intellectual property (asset) situated in India liable to be taxed as capital gains. Assessee is treated as an assessee- in-default for non-deduction of tax. The assesee challenged the order by filing writ petition and one of the grounds being that the order was barred by limitation relying on the decision in *DIT (IT) v. Mahindra & Mahindra Ltd. (2014) 270 CTR 105/ 106 DTR 337 (Bom) (HC).* Dismissing the petition the Court held that mixed question of fact and law involved, which is within the jurisdiction of the appellate authority to apply its mind and take an appropriate view of the matter by considering the materials, including examining the agreement on its merits and the legal status of the asset as available in the Indian market, by virtue of its registration and the applicability of the provisions of the Trade Marks Act.

The Court also urged the learned ASG that in the larger interest of the officers of the Revenue and with a hope that such issues do not percolate in the orders being passed by the Officers of the Revenue, this concern needs to be taken up at the appropriate level of the Ministry, so that the limits of propriety, the tenor and language used by the officials in passing orders, and on understanding of the legal principles, is well inculcated in such officers of the Revenue, by having regular training sessions. More particularly, considering that such officers-in-discharge of their quasi-judicial powers are required to deal with legal issues, involving the applicability of the decisions rendered by different Courts. Court also observed that the Assessing Officers were not to make such observations so as to indicate the righteous and solemn path which needs to be followed by the Officers in the course of statutory adjudication, we would have possibly failed in our duty as a Constitutional Court. (AY. 2020-21)
Hindustan Unilever Ltd. v. DCIT (IT) (2024) 166 taxmann.com 660 / 341 CTR 6 /242 DTR 153 / 8 NYPCTR 1252 (Bom) (HC)

S. 201 : Deduction at source-Failure to deduct or pay –Survey-Direct payment to non-resident-Contractor-Deducted tax at 2 per cent under section 194C-Tribunal is justified in directing Assessing Officer to calculate interest on amount which was paid by contractor as self-assessment tax till date it was deposited and such interest was to be paid by assessee for not deducting tax at source. [S. 133A, 194C (4), 195(2), 201(1), 201(IA), 260A] 2391

During course of survey under section 133A, it was found that assessee had made direct payment to non-resident contractor, PT and deducted tax at rate of 2 per cent under section 194C instead of rate of 48 per cent under section 195(2), resulting into short deduction of TDS of Rs. 3. 35 crores. Department initiated proceedings under section 201(1) read with section 201(1A) and an order was passed for determining interest under section 201(1A) considering certificate of lower deduction/no deduction under section 194C(4) issued by DDIT (International Tax.), Chennai. Tribunal held that when deductee, PT, had paid entire amount of tax except Rs. 8.00 lakh which was paid as self-assessment tax, contractor had not commited any default in obtaining certificate under section 194C(4) as against section 195(2) and further held that interest under section 201(1A) should be charged upto ultimate tax liability of deductee and directed Assessing Officer to charge interest on amount which was deposited by said deductee as self- assessment tax. Tribunal is justified in directing Assessing Officer to calculate interest on amount which was paid by contractor as self-assessment tax till date it was deposited and such interest is to be paid by assessee for not deducting tax at source.
DIT v. Ahmedabad Vadodara Expressway Co Ltd. (2024) 301 Taxman 590 (Guj.)(HC)

S. 201 : Deduction at source-Failure to deduct or pay –Order passed beyond four years-Barred by limitation-Income deemed to accrue or arise in India-Fees for technical services. [S. 9(1)(vii), 195 201(1), 201(IA), 260A] 2392

Assessee-company paid certain amount towards consultancy charges to Singapore based company. Assessing Officer held that payments made by assessee were fees for technical services (FTS) and since assessee had not deducted tax at source under section 195 an order was passed under section 201(1) and 201(1A) on 6-3-2014. CIT(A) up held the

order of the Assessing Officer. Order of CIT(A) is up held by the Tribunal. On appeal the Court held that since transaction or payment related to financial years 2006-07, 2007- 08, 2008-09 and order under section 201(1) and 201(1A) was passed beyond period of four years, same is barred by limitation. (AY. 2007-08 to 2009-10)
Nilgiri Dairy Farm (P.) Ltd. v. ITO (IT) (2024) 301 Taxman 410 (Karn)(HC)

2393 **S. 201: Deduction at source-Failure to deduct or pay-Contractors- Non-deposit of tax deducted at source and no-refund to the deductee with the interest-Court also directed the managing director to pay cost of 5 lakhs to the petitioner. [S. 194C,203 Art. 226]**
The petitioner has filed the writ petition directing the respondent Jharkhand Bijli Vitram Nigam Ltd (JBVNL) to issue TDS certificate for the amount deducted of Rs 2,90,32,000 as income tax @ 2 per cent from the bills raised by the petitioner for supply of materials to respondents to enable the petitioner to get the tax credit. The Department has conducted the Survey and issued notice under section 201 to JBVNL. Demand notice issued to the Jharkhand Bijli Vitram Nigam Ltd (JBVNL) that it committed default in not making TDS deductions cannot cloak the JBVNL with any authority or even an excuse to withhold a certain amount from the running bills of the contractor. This is also relevant that the deductions by the JBVNL starting from the financial year 2016-17 have accumulated to Rs. 2,90,32,000 but it did not deposit the said amount with the IT Department. Amount so withheld from the running bills of the petitioner-firm is speculative and kind of a wagering step by the JBVNL. JBVNL has no authority in law to withhold Rs.2,90,32,000 as "kept back" amount for the purpose of litigation with the IT Department. Action of the JBVNL in withholding Rs. 2,90,32,000 is therefore, held illegal and deprecated and cost must be imposed upon it. JBVNL has not followed its own stipulation under cl. 10. 1 of the general conditions of contract and it seeks to place a very unreasonable reliance on cl. 10. 7 which is not at all applicable in a situation like the present one. It is not that a new tax liability has been created for which appropriate and equitable adjustment in the contract price is required. Petitioner-firm has specifically pleaded that it has filed IT returns and already paid taxes which shall include the illegal 2 per cent retention from its running bills. Court also held that refund of Rs. 2,90,32,000 must therefore carry interest as a matter of course. JBVNL must be saddled with cost of Rs. 5 lacs which shall be recovered from the managing director.
Anvil Cables (P) Ltd. v State of Jharkhand (2024) 338 CTR 935 (Jharkhand)(HC)

2394 **S. 201: Deduction at source-Failure to deduct or pay-Limitation- Deemed reasonable period of limitation is four years when no period of limitation is prescribed by statute. [S. 201(1), 201(IA)]**
Dismissing the appeal of the Revenue the Court held that deemed reasonable period of limitation is four years when no period of limitation is prescribed by statute. On facts order under section 201(1) was passed by Assessing Officer beyond four years from end of relevant financial year, Tribunal was justified in setting aside said order. Followed *UOI v. Kaumudini Narayan Dalal (2011) 117 Taxman 375/ 249 ITR 219 (SC) CIT v. Narendra Doshi (2002) 122 Taxman 717 / 254 ITR 606 (SC) CIT v. Shivsagar Estate (2002) 124 Taxman 606/ 257 ITR 59 (SC) Berger Paints India Ltd. v. CIT (2004) 135 Taxman 586 / 266 ITR 99 (SC)* (AY. 2002-03)
ITO, TDS v. Indian Oil Corporation Ltd (2024) 296 Taxman 428 (Pat)(HC)

S. 201: Deduction at source-Failure to deduct or pay-Provision in the books of account-Accrual basis-Payee was not known-Tax deducted at source on booking of expenses in following year- Interest leviable only up to date of deduction of tax in subsequent year-Order of CIT(A) is affirmed. [S. 201(1), 201(IA)] 2395

Held, that when the assessee had deducted tax at source in the subsequent year, the demand under section 201(1) could not be raised and interest under section 201(1A) could be charged only up to the date of deduction. Where the payee was not known, or where transactions had been reversed or cancelled, provisions of tax deduction at source were not applicable. The Commissioner (Appeals) was right in granting relief to the assessee and in directing the Assessing Officer to verify the facts and calculate interest up to the date of deduction. (AY. 2014-15 to 2017-18)

Dy. CIT v. Zte Telecom India P. Ltd. (2024)114 ITR 38 (SN)(Delhi)(Trib)

S. 201: Deduction at source-Failure to deduct or pay-Assessee in default-Non-deduction of TDS on property purchases-Benefit of First Proviso-Burden of proof on assessee-Non-filing of Form 26A or supporting CA certificate-Interest under Section 201(1A) applicable until seller's tax filing-Penalty imposed for non-deduction of TDS [S. 194IA, 201(1), 201(IA), 271C, Form No 26A] 2396

The Tribunal dismissed the assessee's appeal, holding that the assessee was rightfully treated as an "assessee-in-default" under Section 201(1) for failure to deduct TDS on property purchases as required under Section 194IA. The assessee claimed relief under the First Proviso to Section 201(1), arguing that the property sellers had already discharged their tax liability. However, the assessee failed to furnish Form 26A or a CA certificate as prescribed under Rule 31ACB of the Income Tax Rules, which is necessary to avail of the Proviso. The Tribunal further upheld the levy of interest under Section 201(1A), relying on the CBDT Circular No. 275/201/95-IT(B) dated 29. 01. 1997 and the Supreme Court's decision in *Hindustan Coca Cola Beverage Pvt. Ltd. v. CIT (2007) 163 taxmann.com 355 (SC)*, holding that interest is payable by the purchaser until the seller files their tax returns. As the assessee did not prove compliance with these provisions, the interest demand was confirmed. Both appeals were dismissed as the assessee could not substantiate claims or comply with the procedural requirements. (AY. 2015-16)

Keshavpriya Corp Pvt. Ltd. v. ACIT (2024) 112 ITR 45 (SN) (Ahd)(Trib.)

S. 201: Deduction at source-Failure to deduct or pay-Assessee in default-Reasonable cause-No specified time limit for initiating proceedings under section 201(1) and 201(1A) in cases involving non-resident payees. [S. 9(1)(vi), 201(1), 201(IA)] 2397

The Assessee argued that the proceedings under Section 201(1) and 201(1A) were time-barred as they were initiated beyond a reasonable period of four years from the end of the relevant financial year. The Revenue maintained that there was no specific time limit prescribed for initiating proceedings under Section 201(1) and 201(1A) in cases involving non- resident payees. The Tribunal held that the proceedings under Section 201(1) and 201(1A) were not time-barred. That there is no specific time limit prescribed for initiating such proceedings in cases involving non- resident payees. Moreover, that the determination of a "reasonable time" limit depended on the facts and circumstances of each case. (AY. 2003 to 2010-11)

Jaisu Shipping Co. v. ADIT (2024) 111 ITR 601 (Rajkot)(Trib.)

2398 **S. 201 : Deduction at source-Failure to deduct or pay-Salaries- Perquisite-Rent free accommodation-Concession-No finding is recorded-Addition is deleted. [S. 17(2)(ii), 201(1) R. 3]**

Assessee-IIT is providing residential accommodation to its employees. Assessing Officer passed an order under section 201 holding that assessee was required to deduct tax at source on perquisite value of accommodation provided to employees at rate of 15 percent of salary. CIT(A) held that there was no perquisite value of rent - free accommodation provided to employees and deleted the demand. On appeal the Tribunal held that the Assessing Officer had not established if assessee had provided accommodation to employees at concessional rates. Assessing Officer had fallen in error by straightaway invoking rule 3 for computing value of perquisite and treat assessee in default in deducting tax at source on said value, without first recording a finding as to whether there was concession and case was covered by section 17(2)(ii). Order of CIT(A) is affirmed. (AY. 2012-13)

ACIT v. Indian Institute of Technology. (2024) 205 ITD 305 (Delhi) (Trib.)

2399 **S. 201: Deduction at source-Failure to deduct or pay-Failure to respond-Matter remanded back to file of Assessing Officer to afford one more opportunity of being heard to assessee. [S. 201(1), 201(IA)]**

Assessing Officer sent a notice to assessee for non-deduction of TDS on medical insurance premiums and payments to co-insurance companies- Assessee-company failed to provide relevant details. No reply was filed. The Assessing Officer treated the assessee to be an 'assessee-in-default' and raised demand. CIT(A) up held the order. On appeal the matter is remanded back to the file of the Assessing Officer to afford one more opportunity of being heard to assessee. (AY. 2012-13, 2014-15)

United India Insurance Co. Ltd. v. DCIT TDS (2024) 204 ITD 8 (Chennai) (Trib.)

2400 **S. 201: Deduction at source-Failure to deduct or pay-DTAA-India-UAE. [S. 9(1)(vi), 201(1), 201(IA), Art. 7]**

The TDS Officer held that the assessee had made payment to oilstone UAE for various services as mentioned in the Explanation 2 to Section 9(1)(vi) of the Act and such payment was in the nature of royalty and since the assessee failed to deduct tax on such payment, it was default and liable to the provisions of Section 201(1) and (1A) of the Act. The TDS Officer accordingly raised a demand-under Section 201(1) and (1A) of the Act on the assessee.

Aggrieved with the aforesaid order, the assessee filed appeal before CIT(A) challenging addition made / treatment given by TDS Officer. CIT(A) held that since, the services were provided by oilstone, UAE to the assessee outside India and services were utilised for the purpose of business of the assessee outside India, the case of the assessee was covered by the exclusion clause provided in Section 9(1)(vii)(b) of the Act and the payment was not chargeable to tax in India as "fees for technical services" hence, the Assessing officer was not justified in holding the assessee as an assessee in default under Section 201(1) and (1A) of the Act. The Department filed an appeal before Tribunal against the deletion of additions made by the TDS Officer. Tribunal held that in the absence of fees for technical services clause in the India-UAE Tax-treaty, payment

of aforesaid services cannot be taxed in India, unless it is established that the overseas company had a permanent establishment (PE) in India. In the instant case, the assessee had also furnished a declaration regarding "no permanent establishment in India". Tribunal further held that the assessee was not under any obligation to withhold taxes on such payments made to Oilstone UAE and did not find any infirmity in the Order of CIT(A). Hence, the appeal of the department was dismissed. (AY. 2018-19)
Dy. CIT v. Kalpataru Power Transmission Ltd. [2024] 109 ITR 689 (Ahd) (Trib)

S. 201 : Deduction at source-Failure to deduct or pay-Survey-Medical insurance premium-Payment to co-insurance companies-Natural justice-Matter remanded. [S. 133A, 201(1), 201(IA)] 2401
Assessing officer sent notice to assessee for non-deduction of TDS on medical insurance premiums and payments to co-insurance companies. Assessee company failed to provide relevant details. Assessing officer held assessee liable to be an assessee in default. On appeal the Tribunal held that the assessee could not file any evidence or explanation with regards to TDS to be deducted towards medical insurance and co-insurance company before assessing officer due to a reasonable cause. The matter remanded to the Assessing Officer to give one more opportunity and pass the order considering the reply of the assessee. (AY. 2012-13, 2013-14)
United India Insurance Co Ltd v. Dy. CIT (2024) 204 ITD 8 (Chennai)(Trib)

S. 205: Deduction at source-Refund adjustment-Bar against direct demand-Salary-Deduction of tax at source-Failure of employer to deposit tax-deducted at source-Employee cannot be penalised. [S. 192, 194, 199, 237, Art. 226] 2402
Employer paid salary to assessee after deduction of tax at source but did not deposit same with department. Assessing Officer did not allow credit of tax deducted at source and raised demand against assessee towards tax and interest. The Revenue has adjusted the demand against the refund due to the assessee. On writ the court held that, if employer after deduction failed to deposit the tax deducted at source, the assessee cannot be penalised. Section 199 could not operate as impediment to grant relief to assessee. Accordingly, the demand is set aside. The Revenue is directed to refund the amount recovered. The Court also observed that it is the duty of the employer acting as a collecting agent to pay the tax deducted at source to Central Government. (AY. 2009-10, 2011-12, 2012-13)
Chintan Bindra v. Dy. CIT (2024)470 ITR 346 /158 taxmann.com 27 (Delhi)(HC)

S. 205: Deduction at source-Bar against direct demand-Tax deducted at source-Form No. 16A is issued –Credit for tax deduction at source cannot be denied-Review petition of Revenue is dismissed. [S. 199, Form No. 16A, Code of Civil Procedure] 2403
Assessee provided services to Clutch Auto Ltd. (CAL) which made payment. Assessee claimed that CAL did not deposit deducted tax at source with revenue department on payments so made. Demand was raised against the assessee. On writ the Court held that revenue department could not indirectly recover tax that could not be directly collected from deductee, as this would contravene section 205 and ordered a refund to assessee. Revenue filed a review application, contending that Form 16A was not produced as

evidence of tax deduction. Court held that Form 16A is amongst others, a piece of evidence which can establish deduction of tax at source but said, Form 16A is not only piece of evidence in that regard and in a case where assessee can show reliable material other than Form 16A and prima facie establish deduction of tax at source, then assessee cannot be denied benefit of provisions of section 205. Bar under section 205 operates as soon as it is established that tax had been deducted at source and it is wholly irrelevant as to whether tax deducted at source is deposited or not and whether Form No. 16A has been issued or not. Since the assessee declared in his return of income tax deducted at source by CAL and supported same with his ledger account, it showed assessee's efforts to prove tax deduction and therefore there was no apparent error in order of High Court requiring a review. (AY. 2011-12)
Incredible Unique Buildcon (P.) Ltd. v. ITO (2023)470 ITR 106 / 155 taxmann.com 603 (Delhi) (HC)

2404 **S. 205: Deduction at source-Bar against direct demand--Principle of grossing up-Failure to deposit tax deducted at source-Payee is entitle to credit for tax deducted at source. [S. 192(1), 199(3)]**
Dismissing the appeal of the Revenue the Court held that if the payer does not deposit the tax deducted at source to the Government, the payee cannot be denied the deduction of tax at source.
PCIT v. Jasjit Singh (2024)470 ITR 337 (Delhi)(HC)

2405 **S. 205: Deduction at source-Bar against direct demand-Failure to deposit tax deducted at source-Salary-Demand notice is set aside. [S. 15, 192, 194, 199(1), 201(2), 202, 221, 276B, Art. 226]**
The petitioner was employed in Tulip Telecom Ltd. The employer deducted tax at source on salary however, the said amount was not deposited with the Government. The Assessing officer issued demand notice on the assessee. On writ allowing the petition, the Court held that for failure to deposit tax deducted at source on salary by the employer the assessee cannot be held to be assessee in default. Accordingly, the demand notice against the assessee is set aside and the Revenue is directed to allow credit of tax deducted by the employer. (AY. 2013-14)
Harshdip Singh Dhillon v. UOI(2024) 470 ITR 355 (Delhi) (HC)

2406 **S. 205: Deduction at source-Bar against direct demand-Tax deducted at source-What the Revenue cannot do directly, it is impermissible for it to reach the same end indirectly-Revenue is directed to refund-Mistake apparent-Review petition is dismissed. [S. 260A, Form No 16A]**
Dismissing the review petition of the Revenue the Court held that at the time of disposal of the writ petition, the counsel for review applicant Revenue had not disputed that the issue raised in the present writ action stands covered by the judgment in the case of *Sanjay Sudan v. ACIT (2023) 331 CTR 797/ 224 DTR 99(Delhi) (HC)*. Now, counsel for the review applicant contended that the case which led to the judgment of Sanjay Sudan stood on different footing insofar as in the said case, the assessee had produced Form No. 16A to establish the tax deducted at source. However, Form 16A is not the only

piece of evidence in that regard. Assessee can rely on other material. From the language of S. 205, it is clear that the bar operates as soon as it is established that the tax had been deducted at source and it is wholly irrelevant as to whether the tax deducted at source is deposited or not and whether Form No. 16A has been issued or not. There is no error, much less an error apparent on the face of record which would persuade the Court to engage in reviewing the impugned order dt. 31st May, 2023. Revenue cannot recover the deficit tax at source from the assessee, which was deducted and pocketed by CAL, and they also cannot refuse to grant credit for the same. What the Revenue cannot do directly, it is impermissible for it to reach the same end indirectly. Revenue is directed to refund Rs. 11,39,870 to the assessee. Followed *Sanjay Sudan v. ACIT (2023) 331 CTR 797* / *224 DTR 9(Delhi) (HC).* (AY. 2011-12)

Incredible Unique Buildcon (P) Ltd. v. ITO [2023] 155 taxmann.com 603 / *(2024) 337 CTR 121* / *(Delhi)(HC)*

Editorial: Incredible Unique Buildcon (P) Ltd. v. ITO (2024) 337 CTR 129/ 234 DTR 352 (Delhi)(HC)

S. 205 : Deduction at source-Bar against direct demand-Tax deducted at source on salary-Employer has not deposited with Department-Assessee could not be penalized for failure of employer to perform his duty to deposit deducted tax. [S. 192, 199, Art. 226] 2407

Employer paid salary to assessee after deduction of tax at source but did not deposit same with department. Assessing Officer did not allow credit of tax deducted at source and raised demand against assessee towards tax and interest. On writ allowing the petition the Court held that assessee having accepted salary after deduction of tax at source had no further control over it and it was duty of employer to pay deducted tax to department and employer having failed to perform his duty to deposit deducted tax, assessee could not be penalized. Court held that section 199 could not operate as impediment to grant relief to assessee and, demand against the assessee is set aside. (2009-10, 2011-12, 2012-13)

Chintan Bindra v. CIT (2024)158 taxmann.com 27 / *336 CTR 643 (Delhi) (HC)*

S. 205: Deduction at source-Bar against direct demand-Salaried employee –Tax deducted at source-Tax has been deducted at source but not deposited to Government's account by deductor, deductee- assessee shall not be called upon to pay demand to extent tax has been deducted from his income-Department should not deny benefit of tax deducted at source by employer during relevant financial years. [S. 192, 199, 234B, 234C, Form 26AS, Art. 226] 2408

Assessee, a salaried employee, filed his income tax return for assessment year 2013-14, reporting a gross salary from its employer-company with TDS deducted. However, a significant discrepancy was found between TDS amount deducted by employer and amount reflected in Form 26AS obtained from Income Tax Department website. Despite tax being deducted, a portion of amount had not been transmitted to Income Tax Department by employer. Consequently, assessee was deprived of receiving credit for full TDS amount, leading to a demand notice issued by income tax department, inclusive of interest under Sections 234B and 234C. On writ allowing the petition the Court held

that in case of an assessee whose tax has been deducted at source but not deposited to Government's account by deductor, deductee-assessee shall not be called upon to pay demand to extent tax has been deducted from his income. Further, section 205 puts a bar on direct demand against assessee in such cases and demand on account of tax credit mismatch in such situations cannot be enforced coercively. Therefore, department should not deny benefit of tax deducted at source by employer during relevant financial years to assessee. Followed in *Taylor v. Taylor (1876) 1 Ch D 426*, it was laid down that where a power is given to do a certain thing in a certain way the thing must be done in that way or not at all. Other methods of performance are necessarily forbidden. This doctrine has often been applied to Courts. Lord Roche in Nazir Ahmad v. King Emperor AIR 1936 PC 253 followed the aforesaid principle. Subsequently, the said principle has been well recognized by the apex Court and is holding the field till today. (AY. 2013-14) *Malay Kar v. UOI (2024) 299 Taxman 555 / (2025) 343 CTR 133 / 472 ITR 714 (Orissa) (HC)*

2409 **S. 206C : Collection at source-Trading-Alcoholic liquor-Seller--Buyer- Marketing of arrack-Auction or Tender-Arrack then sold in retail by excise contractors in allotted area-Excise contractors obtained only right to vend arrack on retail-Not arrack-Not bound to collect tax from them-No express provision regarding issuance of notice and affording hearing to seller before passing an order-Requirement of notice and hearing before order passed to be read into provision- Natural justice-when order entails adverse civil consequences or is prejudicial to person concerned principles of natural justice to be followed. [S. 206C(6), Karnataka Excise Act, 1965, S. 17, 71, Karnataka Excise (Arrack Vend Special Conditions Of Licences) Rules, 1967, R. 2, 4, 5, Karnataka Excise (Manufacturing and Bottling of Arrack) Rules, 1987, Rr. 3, 17]**

Allowing the appeal the Court held that by a process of auction or tender, the excise contractors were shortlisted. Thereafter, they were provided permits. On the strength of the permits, they obtained arrack in bottled condition (or in sealed polythene sachets) from the warehouse or depot on payment of issue price fixed by the Excise Commissioner. Such arrack was then sold in retail by the excise contractors in the area or areas allotted to them. Therefore, it could not be said that by virtue of the auction, certain quantities of arrack were purchased by the excise contractors. At this stage there were two transactions, each distinct. The first transaction was shortlisting of excise contractors by a process of auction, etc., for the right to retail vend. The second transaction, which was contingent upon the first transaction, was obtaining of arrack for retail vending by the excise contractors on the strength of the permits issued to them post successful shortlisting following auction. Therefore, it was clear that arrack was not obtained by the excise contractors by way of auction. What was obtained by way of auction was the right to vend the arrack on retail on the strength of permits granted, following successful shortlisting on the basis of auction. Thus, the first condition under clause (iii) of Explanation (a) to section 206C was satisfied. After the arrack was obtained by the excise contractor, the requirement of the second condition under Explanation (a)(iii) was that he had to sell it in the areas allotted to him at the sale price fixed in terms of rule 4 of the 1967 Rules. The language of the second condition was that the sale price of such goods to be sold by the buyer was fixed

by or under any State statute. Rule 4 of the 1967 Rules enabled the excise contractor to sell the arrack in retail at a price within the range of minimum floor price and maximum ceiling price which is fixed by the Excise Commissioner. A minimum price and a maximum price were fixed within which range the arrack had to be sold by the excise contractor. Thus, the price of arrack to be sold in retail was not dependent on market forces but predetermined within a range. Therefore, the arrack was sold at a price which was fixed statutorily under rule 4 of the 1967 Rules and thus, the second condition was satisfied. Since both the conditions as mandated under Explanation (a) (iii) were satisfied, the excise contractors or the liquor vendors selling arrack would not come within the ambit of "buyer" as defined under Explanation (a) to section 206C of the Act. Section 206C was not applicable in respect of the assessee and the liquor vendors (contractors) who bought the vending rights from the assessee on auction could not be termed "buyers" within the meaning of Explanation (a) to section 206C of the Act. The orders of the Division Bench of the High Court, the single judge and the Deputy Commissioner (TDS) were to be quashed. That though a show-cause notice was issued to the assessee to which reply was also filed, that would not be adequate having regard to the consequences that such an order passed under section 206C(6) of the Act would entail. It was incumbent on the Assessing Officer to have afforded the assessee an adequate and reasonable opportunity of hearing. (AY. 1995-96 to 2000-01)
Excise Commissioner, Karnataka v. Mysore Sales International Ltd(2024)466 ITR 205/ 300 Taxman 115/339 CTR 321 (SC)
Editorial : Excise Commissioner, Karnataka. v. Mysore Sales International Ltd (2006) 286 ITR 136 (Karn)(HC), reversed.

S. 206C: Collection at source-Trading-Alcoholic liquor-Scrap-Empty liquor bottle not scrap-Not taxable on income from sale of empty liquor bottles-Interpretation of taxing statutes-Strict interpretation. [S. 206CC, 206CCA, Art. 226] 2410
Assessee floated tenders to select third-party bar contractors (licensees) to sell eatables and collect empty bottles left by consumers at bars situated adjacent to/within assessee's retail shop of liquor. Assessee acting as an agent merely collected tender/licence amount from successful tenderer and remitted 99 per cent of same to Government retaining 1 per cent commission. The AO held that sell of bottles as scrap and treated the assessee as assessee-in-default for failure to collect tax at source under section 206C on amount tendered by bar licensee from sale of empty bottles. On writ allowing the petition the Court held that empty bottles were neither generated in manufacturing, nor in mechanical working of material and hence, cannot be termed as scrap. Neither assessee nor licensee were owners of waste bottles hence, sections 206C, 206CC and 206CCA were incorrectly invoked. Orders are not valid. Circulars and Notifications: Circular No. 7/2016, dated 7-3-2016 and Circular No. 525 dated 24-11-1998. (AY. 2016-17 to 2023-24)
Tamil Nadu State Marketing Corporation Ltd. v. DCIT [2024] 463 ITR 487 /336 CTR 763 (Mad)(HC)

S. 206C: Collection at source-Refund –Purchase of coal used in generation of power-Directed to refund the amount collected. [S. 206C(IA), 237, 244A Art. 226] 2411
Assessee (buyer of coal) filed a writ petition stating that seller of coal at instance of department forcefully collected certain sum from it towards tax collected at source

(TCS) and deposited same with department and prayed for issuance of directions to department to refund said sum along with statutory interest to it. Allowing the petition the Court held that since department committed illegality in compelling seller in effecting TCS qua transactions of purchase of coal, which according to assessee was genuinely used in generation of power, department is directed refund entire sum collected as TCS from assessee to seller who shall thereafter, refund same to assessee. Interests as claimed/prayed by the assessee, the assessee would be at liberty to move competent Civil Court for redressal of his grievance of interest, if so advised. (AY. 2013-14 to 2018-19)

Adhunik Power & Natural Resources Ltd. v. Central Coalfields Ltd. (2024) 296 Taxman 53/ (2025) 476 ITR 213 (Jharkhand)(HC)

Editorial : SLP of assessee, rejected, Adhunik Power and Natural Resources Ltd v. Central Coalfields Ltd [2025] 476 ITR 225 / 175 taxmann.com 840 (SC)

2412 **S. 206C: Collection at source-Scrap-Assessee in default-Sales of firewoods and iron materials-Provision of Section 206C(6A) is not applicable-Matter remanded for verification. [S. 206C(6A) R. 37J, Form No 27BA]**

The assessee claimed that other sales are not covered under S. 206C like sales of firewoods and iron materials. The issue under R. 37J read with Form 27BA has remained untouched by the Revenue authorities. Matter is remitted to the AO to verify the issues. (AY. 2008-09 to 2010-11)

Mohd Javed Belim v. ACIT 2024) 163 taxmann.com 172 /228 TTJ 1 (UO) (Jodhpur) (Trib)

2413 **S. 206C : Collection at source-Trading-Forest produce-Minor forest product-Forest product-Vegetable and animal origin, such as grasses, bamboos, canes, tans, dyes, oils, gums, resins, fibres, flosses, leaves, drugs, spices, poisons, edible products and animal prod-Minor forest products-Not liable to collect tax at source Agricultural product in the nature of Mahua Oil, Puhad, Ambadi, Dolma Kanji, Ratanjot and the cattle feed (Bhusa and Khal), etc. is not liable to collect tax at source. [S. 206C(1), 206C(6A), 206C(7)]**

The assessee is dealer of forest product other than Tendu Patta and Timber and Agricultural product in the nature of Mahua Oil, Puhad, Ambadi, Dolma Kanji Ratnjot and the cattle feed (Bhusa and Khal) etc. The AO levied 2. 5% of the turnover for failure to collect tax at source. The CIT(A) up held the order of the AO. On appeal the Tribunal held that minor forest product and forest product are different in their nature. Minor forest products such as products of vegetable, and animal origin, such as grasses, bamboos, canes, tans, dyes, oils, gums, resins, fibres, flosses, drugs, spices, poisons, edible products and animal products are not covered under S. 206C(1) the assessee dealing in the minor forest product and agricultural product in the nature of Mahua Oil, Puhad, Ambadi, Dolma Kanji, Ratanjot and the cattle feed (Bhusa and Khal), etc. are not liable to collect tax at source deduct tax under S., 206C. (AY. 2011-12 to 2016-17)

Bheru Lal Garg v. ITO (2023) 157 taxmann.com 602/ 37 NYPTTJ 1684/ (2024) 227 TTJ 356 / 233 DTR 353 (Jodhpur)(Trib)

S. 206AA: Requirement to furnish Permanent Account Number- Provisions of the Income-Tax Act, 1961 cannot override Double Taxation Avoidance Agreement. [S. 90, 260A] 2414

The Revenue filed an appeal challenging the order of the Tribunal before the Hon'ble Karnataka High Court wherein it had to be decided whether the provision of section 206AA starting with a non-obstante clause overrides all provisions of the Income Tax Act, 1961 and as such provisions of the Double Taxation Avoidance Agreement would not override the provisions of the Income Tax Act, 1961. However, the Hon'ble Court relied on the decision in case of *CIT (IT) v. Wipro Ltd. [2023] 22 ITR-OL 371 (Karn.) (HC)* to hold that the instant case would be covered by the said decision thereby re-confirming the view that provisions of the Income-Tax Act, 1961 could not override the provisions of Double Taxation Avoidance Agreement.

CIT (IT). v. Edgeverse Systems Ltd. [2024] 469 ITR 267 (Karn)(HC)

S. 220: Collection and recovery-Assessee deemed in default –Stay of recovery-SLP of assessee is disposed of by reserving liberty to assessee to file a review petition before Division Bench of High Court and till initial consideration of review petition for any interim or final order, there would be stay of directions. [Art. 136] 2415

Assessee challenged a conditional stay order issued by Appellate Authority, which required payment of 20% of total tax demand for assessment years 2014-2015 to 2019-2020 in seven installments. Single Judge dismissed writ petition, deeming stay order reasonable. Assessee filed writ appeal, arguing that no reasons were provided for 20% payment requirement and that compliance would cause hardship due to financial difficulties. Court held that in as much as Appellate Authority had directed assessee to pay only 20% of total tax demand raised for various assessment years and had also granted installments to effect said payment of 20% of said tax amount, non- interference with said order by Single Judge did not appear to be unreasonable. However, considering assessee's financial difficulties, court modified order to permit payment in seven monthly instalments starting from June 15, 2024. SLP of assessee is disposed of by reserving liberty to assessee to file a review petition before Division Bench of High Court and till initial consideration of review petition for any interim or final order, there would be stay of directions. (AY. 2014-15 to 2019-20)

Covenant Stones (P.) Ltd. v. CIT (Appeals) (2024) 301 Taxman 554 (SC)

Editorial: Covenant Stones (P.) Ltd. v. CIT (Appeals) (2024)167 taxmann.com 639 (Ker)(HC)

S. 220: Collection and recovery-Assessee deemed in default- Pendency of appeal before Tribunal-30 per cent of demand had already been recovered-Further recovery of tax demand is stayed till disposal of appeal by Tribunal. [S. 220 (6), 254(1) Art. 136] 2416

Court held that the 30 per cent of demand had already been recovered. Accordingly further recovery of tax demand is stayed till disposal of appeal by Tribunal.

PPK News Click Studio (P.) Ltd. v. Dy. CIT (2024) 300 Taxman 449/ (2025) 343 CTR 675 (SC)

Editorial: PPK News Click Studio (P.) Ltd. v. Dy. CIT (2024) 165 taxmann.com 613/ (2025) 343 CTR 676 (Delhi)(HC), modified.

2417 **S. 220: Collection and recovery-Assessee deemed in default-Stay- Pendency of appeal-Direction of High Court is modified and requirement of security with respect to penalty was to be dispensed with. [S. 115-O, 260A, 226, Art. 136]**

Assessee-company purchased its own shares from non-resident shareholders in accordance with a scheme of arrangement sanctioned by High Court. Assessing Officer treated consideration paid by assessee for purchase of its own shares from shareholders as deemed dividend and consequently assessee was liable for payment of DDI under section 115-O. On pendency of appeal the Assessee filed petition seeking for an order of interim stay of all recovery proceedings initiated by revenue. Assessee submitted that they had already paid a sum of Rs. 495 crores, besides a sum of Rs. 898.01 crores towards TDS remittance, available with department. High Court directed revenue to release lien on remaining fixed deposits after assessee made a payment of Rs. 1500 crores in cash or give a letter to bank to remit Rs. 1500 crores to credit of revenue from fixed deposits available, and furnish property security for balance tax liability with interest and penalty. On appeal the Court modified and requirement of security with respect to penalty was to be dispensed with. (AY. 2017-18)

Cognizant Technology Solutions India (P.) Ltd. v. ACIT (2024) 297 Taxman 137 /464 ITR 190/ 338 CTR 141 (SC)

Editorial: Cognizant Technology Solutions India (P.) Ltd. v. ACIT (2024) 158 taxmann.com 428 /338 CTR 143 / 464 ITR 183 (Mad)(HC)

2418 **S. 220: Collection and recovery-Assessee deemed in default-Stay- SLP dismissed as not pressed. [Art. 136]**

High Court held that, in view of admitted position that 20 per cent of amount demanded had neither been deposited nor any request to grant time to deposit same was made, hearing on stay application could not have been expedited. Special Leave Petition filed by assessee against said order was to be dismissed as not pressed. CBDT Circular F. No. 404/72/93-ITCC, dated 31-7-2017

Allahabad Development Authority v. CIT (E) (2024) 296 Taxman 159 (SC)

2419 **S. 220: Collection and recovery-Assessee deemed in default-Waiver of interest-Payment of license fees-Capital or revenue-Judgement dated 16-10-2023-Telecom Policy commenced in the year 1999, payment of interest for period for which tax demand was now to be met in respect of those cases was to be waived. [S. 35ABB, 37(1), Art. 136]**

Supreme Court by order dated 16-10-2023 in *CIT v. Bharti Hexacom Ltd. [2023] 155 taxmann.com 322/ 458 ITR 593 (SC)*, overruled Delhi High Court's ruling and held that payment of license fee to DoT under Telecom Policy, 1999 was capital in nature. It was submitted that a heavy burden would now be on assessees as from assessment year 2000-2001 onwards tax demand would have to be recomputed and met. Therefore, assessees sought for waiver of interest for said period. Revenue however, objected to this submission by contending that since now tax demand would have to be met by assessees, it was logical that interest on said demand would also have to be paid. Allowing the application of the petitioner the Court held that since judgment of Supreme Court was dated 16-10-2023, having regard to Telecom Policy, which

commenced from year 1999, payment of interest for period for which tax demand was now to be met in respect of these cases was to be waived. Court also clarified that this order having been passed in peculiar facts of this case shall not be a precedent in any other case. (AY. 1999-2000 to 2007-08)
CIT v. Bharti Hexacom Ltd. (2024) 299 Taxman 89/466 ITR 387/ 338 CTR 873 (SC)
Editorial: CIT v. Bharti Hexacom Ltd(2023) 155 taxmann.com 322/ 458 ITR 593 /335 CTR 1(SC)

S. 220: Collection and recovery-Assessee deemed in default-Stay- Survey-Reassessment-Pendency of appeal before CIT(A)-Stay was granted subject to deposit of only 10 per cent of demand-There was no procedural impropriety affecting order on stay application-SLP of the assessee is dismissed. [S. 133A, 143(3), 147, 148, 156, 226, 250, Art. 136] 2420
Assessment of assessee was reopened for relevant assessment years due to survey proceedings. Assessee appealed these orders, and during pendency of appeal, requested a stay of demand. Initially, authority ordered assessee to deposit 20 per cent of demand before considering appeal. Assessee challenged this decision, citing lack of judicial scrutiny. Court agreed, ordering reconsideration. Subsequently, authority revised deposit requirement to 10 per cent. Assessee filed another writ petition alleging that various figures and details which were given by him had not received consideration. High Court held that authority had not restricted relief to 20 per cent but had granted stay subject to deposit of only 10 per cent of demand based on order of assessment, it could be said that there was no procedural impropriety affecting order on stay application. SLP of the assessee is dismissed. Filed against impugned order of High Court was to be dismissed. (AY. 2014-15, 2016-17, 2020-21)
Kunj Bihari Lal Agarwal v. PCIT (Central) (2024) 299 Taxman 92 / 464 ITR 767 (SC)
Editorial: Kunj Bihari Lal Agarwal v. PCIT (2024) 161 taxmmann.com 156 /464 ITR 744 (Raj)(HC)

S. 220: Collection and recovery-Assessee deemed in default-Stay of recovery-Undue hardship-Failure to raise prima facie case-liberty is granted to move Principal Commissioner afresh application for stay. [S. 50C, 220(6), Art. 226] 2421
Application of stay is disposed of by Assistant Commissioner directing assessee to deposit 20 per cent of demand. Aggrieved by the order the assessee filed petition before the High Court. Court held that the asseessee can raise the issue of prima facie case before the Principal Commissioner, liberty is granted to assessee to move Principal Commissioner afresh. Matter is remanded.
Avantha Realty Ltd. v. PCIT (2024) 470 ITR 488 /161 taxmann.com 529 (Delhi) (HC)

S. 220: Collection and recovery-Assessee deemed in default-Stay- Requirement of payment of 20 per cent of demand is not a precondition-Deposit of 20 per cent of demand can be relaxed in appropriate cases. [S. 201(1), 201(IA), Art. 226] 2422
Held that since neither Assessing Officer nor Commissioner had either dealt with contentions and submissions advanced by petitioner nor had considered three basic principles i. e. prima facie case, balance of convenience and irreparable injury while

deciding stay application, matter was to be remanded back to Commissioner for fresh adjudication. (AY. 2013-14, 2014-15)
Dr. B. L. Kapur Memorial Hospital v. CIT (2023) 470 ITR 484 /146 taxmann.com 422 (Delhi) (HC)

2423 **S. 220: Collection and recovery-Assessee deemed in default-Stay of demand-Adjustment of demand-Matter is remanded to Dy. Commissioner for reconsidering application. [S. 220(6), Art. 226]**
Court held that the application filed by the assessee under section 220(6) had neither been considered nor disposed of and Dy. Commissioner proceeded to adjust demand raised for impugned assessment year against refunds which were due and payable to assessee. The action being arbitrary, the matter is remanded to the Deputy Commissioner for reconsideration. (AY. 2018-19)
National Association of Software and Services Companies (Nasscom) v. Dy. CIT (2024)470 ITR 493 /160 taxmann.com 728 (Delhi) (HC)

2424 **S. 220: Collection and recovery-Assessee deemed in default- Pendency of appeal-Purchase transaction-Bogus purchase-Not liable to submit seller's stock register-Not liable to pay 25 Per Cent of demand. [S. 37, 156, 220(6), 250, Art. 226]**
On writ the Court held that the assessee was not liable to pay 25 per cent of the demand when the statutory appeal was pending before the appellate authority against the assessment order disallowing the set-off of brought forward loss. Though the assessee was not liable to submit any evidence to prove the seller's return and other particulars of the seller to prove that the transactions were not bogus, no order had been passed by the court on the merits. Only for the limited extent to decide the payment of 25 per cent of the demand, the assessee was not liable to submit seller's stock register. The appellate authority could consider the issue on its own merits. (para 8) (AY. 2021-22)
A. Rangasamy Engineers Pvt. Ltd. v. ACIT (2024)469 ITR 620 (Mad)(HC)

2425 **S. 220 : Collection and recovery-Assessee deemed in default-Cash credits-Pendency of appeal before Tribunal-Not been able to make out prima facie case in its favor for stay on recovery proceedings and had also not been able to demonstrate financial stringency- Recovery proceedings is not stayed. [S. 220(6), 254(1), Art. 226]**
The Tribunal declined to grant stay against recovery proceeding on ground that there were concurrent findings of two quasi-judicial authorities against the assessee by raising valid concerns about the genuineness of the transaction and assessee had no prima facie case to contend that as for the purpose of section 68, it had prima facie discharged its burden or that provisions of section 68 had been patently wrongly invoked. On writ, High Court dismissed the petition for stay of recovery.
PPK News Click Studio (P.) Ltd. v. Dy. CIT (2024) 165 taxmann.com 613 / (2025) 343 CTR 676 (Delhi)(HC)
Editorial: Order of High Court is modified, as 30 percent of tax in dispute is recovered, stay is granted till disposal of appeal by Tribunal. PPK NewsClick Studio (P.) Ltd. v. Dy. CIT (2024) 300 Taxman 449/ (2025) 343 CTR 675 (SC)

S. 220: Collection and recovery-Assessee deemed in default- Pendency of appeal before CIT(A)-Failure to deposit 20 per cent of outstanding demand-Application for stay of demand could be considered without a 20 per cent pre deposit, matter required to be remitted to Assessing Officer for considering stay application bearing in mind legal principles-Matter remanded. [S. 250, Art. 226] 2426

Assessee against assessment order filed an appeal before Commissioner (Appeals) and moved an application before Assessing Officer for stay of demand. Assessing Officer held that since assessee had not made a pre deposit of 20 per cent of outstanding demand, application for stay of demand could not be considered. On writ the Court held that in view of legal position that application for stay of demand could be considered without a 20 per cent pre deposit, matter required to be remitted to Assessing Officer for considering stay application bearing in mind legal principles. Matter remanded. CBDT Instruction No. 1914, dated 21-3-1996; CBDT O. M. dated 29-2-2016, O. M. No. 4042/93-ITCC, dated 31-7-2017. (AY. 2022-23)

Centre For Policy Research v. Dy. CIT (2024) 300 Taxman 66 / (2025) 475 ITR 96 (Delhi) (HC)

S. 220: Collection and recovery-Assessee deemed in default-Refund- Adjustment of refund against demand without considering stay application-Matter is remanded for reconsideration. [S. 220 (6), Art. 226] 2427

On writ against the adjustment of refund the Court held that when an application moved by assessee under section 220(6) had neither been considered nor disposed of and Dy. Commissioner proceeded to adjust demand raised for impugned assessment year against refunds which were due and payable to assessee, this action of Deputy Commissioner was wholly arbitrary and unfair. Therefore, matter is remanded to Deputy Commissioner for reconsidering application. (AY. 2018-19)

National Association of Software & Services Companies (NASSCOM) v. DCIT (E) (2024) 340 CTR 41 / 240 DTR 265/160 Taxmann.com 728 (Delhi)(HC)

S. 220: Collection and recovery-Assessee deemed in default- Recovery of tax-Stay-Zoos and Parks Authority of State-Pendency of appeal before CIT(A)-Stay is granted until disposal of appeals on condition of depositing part of outstanding demand. [S 11, 156, 220(6), Art. 226] 2428

The assessee is the Zoos and Parks Authority of the State. In terms of circulars dated February 29, 2016 and July 31, 2017 ([2017] 396 ITR (St.) 55) of the Central Board of Direct Taxes, the Commissioner (E) granted stay of demand subject to payment of 20 per cent of the total demand for the assessment years 2016-17 and 2021-22. In the writ petition filed by the assessee against such order, the court remanded the matter back to the Commissioner (E) for passing a fresh order after giving due opportunity of hearing to the assessee. The Commissioner (E) passed a fresh order to the effect that the assessee had obtained a new permanent account number on December 22, 2014 under which it did not apply for registration under section 12A and that therefore, the assessee did not have a valid registration for the claim of exemption under section 11 of the Income-tax Act, 1961 during the period for which demands were raised and accordingly, raised a demand. Appeals under section 246A were pending before the Commissioner (Appeals)

for each of the assessment years. On a writ the Court held that while the main issue as to entitlement of the assessee to exemption under section 11 was the subject matter of the appeals pending before the Commissioner (Appeals), considering the status of the assessee which had been taken note of by the Commissioner (E) himself, a deposit of Rs. 3 crores being made by the assessee, the demand raised under section 156 for the assessment years 2016-17 to 2021-22 should remain stayed till disposal of the appeals stated to be pending before the Commissioner (Appeals). Ordered accordingly. (AY. 2016-17 to 2021-22)

Zoos and Parks Authority of Telangana v. CIT (E) (2024)467 ITR 235 (Telangana)(HC)

2429 **S. 220: Collection and recovery-Assessee deemed in default-Stay- Adjustment of more than 20 per cent against demand-Credit for TDS and TCS must be considered-Excess amount collected is directed to be refunded. [S. 239, 240 Art. 226]**

Allowing the petition the Court held that amount already collected by TDS and TCS will have to be adjusted against the amount arrived by applying the rate of 20 percent against tax crystallised as per the assessment order. Accordingly excess amount is to be refunded to the assessee. (AY. 2021- 22)

Orion Security Solutions (P) LTD. v. DCIT [2023] 155 taxmann.com 411 / (2024) 339 CTR 108 (Delhi)(HC)

2430 **S. 220: Collection and recovery-Assessee deemed in default- Recovery-Stay-Waiver of pre-deposit of 20 per cent tax-Pendency of appeal before CIT(A)-Instalment is granted by PCIT-On writ the assessee has not substantiate genuine hardship by placing materials or evidence-Writ petition is dismissed. [S. 220(6), 246, Art. 226]**

The assessee has preferred an application on 3rd May, 2023 before the Asst. CIT, for grant of stay against outstanding demand by filing an application under S. 220(6) contending that the demand raised in assessment is high pitched and it is not possible for the assessee to pay even 20 per cent of the disputed demand because the assessee does not possess enough resources to pay 20 per cent of the demand relying upon the circulars which was considered favorably by providing installment facility. Thereafter, he has preferred an application before the Principal CIT reiterating the same which has been further considered and the installment was reasonably reduced vide order dt. 11th Dec., 2023. The record of the case would clearly demonstrate that the assessee has not prayed for waiver of 20 per cent of assessed tax liability before the appellate authority. The circular issued by the Department cannot overwrite the power of the appellate authority, quasi-judicial authority deciding the merit of the appeal/interim application for stay as the circulars are self-imposed Departmental restraint on the demand/recovery to be raised/persuaded, which cannot affect the statutory power conferred upon the appellate authority. The assessee has not substantiated genuine hardship by placing materials or evidence. Writ petition is dismissed. Followed, *Amolak Singh Bhatia v. PCIT (2020) 316 CTR 680 / 193 DTR 385 (Chhattisgarh) (HC).* (AY. 2018-19)

Shyam Oil Extractions (P) Ltd. v. PCIT(2024) 338 CTR 91 / 159 taxmann.com 555 (Chhattisgarh)(HC)

S. 220: Collection and recovery-Assessee deemed in default-Stay- Pendency of appeal before CIT(A)-Stay granted subject to deposit of 20 Per Cent of demand after considering merits of case is justified-Writ petition is dismissed. [S. 226,250, Art. 226] 2431
Dismissing the writ petition, that admittedly the assessee had filed an appeal against the order passed by the Assessing Officer before the Commissioner (Appeals) which remained pending and a stay petition dated February 1, 2023 was filed before the Assessing Officer seeking stay of collection of the demand. However, the Assessing Officer while entertaining the stay application directed the assessee to pay 20 per cent. of the demand amount, which was passed on the merits keeping in mind the economic condition of the assessee. The order being a reasoned one and having been passed after assessing the status and financial condition of the assessee, as only 20 per cent of the entire demand amount was directed to be deposited, the direction of the Assessing Officer by order dated February 21, 2023 was just and reasonable, and could not be interfered with. (AY. 2015-16)
Treadsdirect Ltd. v. ACIT (No. 1) (2024) 465 ITR 346 (Mad)(HC)

S. 220: Collection and recovery-Assessee deemed in default- Garnishee proceedings-Appeal-High Court-Stay of recovery pending appeal-Buyback of Shares-Interim stay of recovery proceedings granted on conditions of deposit of cash and property for remaining dues with department. [S. 2(22), 46A, 115-O, 220(6), 260A, Art. 226] 2432
Petitioner filed petition, seeking interim stay of the recovery proceedings initiated by the Assistant Commissioner pursuant to an order passed by the Tribunal affirming the orders of the Commissioner (Appeals) and the Assessing Officer and consequential notices issued under section 226(3) of the Income-tax Act, 1961 for the assessment year 2017-18.
The court, held that on the facts and circumstances and having regard to the submissions made by the assessee and the Department, in the interest of both the parties, granted interim stay on conditions that (i) the assessee was to make a payment of Rs. 1,500 crores in cash or give a letter to the bank to remit Rs. 1,500 crores to the Department from the fixed deposits available, and furnish property security for the balance tax with interest and penalty within the time stipulated in the order, (ii) on such payment and deposit of title deeds pertaining to the property, the Department was to release the lien on the remaining fixed deposits of the assessee in the bank, and (iii) in the event of default on the part of the assessee in complying with these conditions, the interim stay order would stand vacated automatically, without any further reference to the court and it would be open to the Department to recover the tax dues from the assessee in accordance with law. The questions raised herein would be considered at the time of final hearing of the appeal. (AY. 2017-18)
Cognizant Technology Solutions India Pvt. Ltd. v. Asst. CIT (2024) 464 ITR 183 / 338 CTR 143 (Mad)(HC)
Editorial: Direction of High Court is modified and requirement of security with respect to penalty was to be dispensed with, Cognizant Technology Solutions India (P.) Ltd. v. ACIT (2024) 297 Taxman 137 /464 ITR 190/ 338 CTR 141 (SC)

2433 **S. 220 : Collection and recovery-Assessee deemed in default-Stay- Survey-Reassessment-Pendency of appeal before CIT(A)-Stay was granted subject to deposit of only 10 per cent of demand. [S. 133A, 143(3), 147, 148, 156,226,250, Art. 226]**

Assessment of assessee was reopened for relevant assessment years due to survey proceedings. Assessee appealed these orders, and during pendency of appeal, requested a stay of demand. Initially, authority ordered assessee to deposit 20 per cent of demand before considering appeal. Assessee challenged this decision, citing lack of judicial scrutiny. Court agreed, ordering reconsideration *(Kunj Bihari Lal Agarwal v. PCIT (2024) 464 ITR 738 (Raj)(HC)).* Subsequently, authority revised deposit requirement to 10 per cent. Assessee filed another writ petition alleging that various figures and details which were given by him had not received consideration. High Court held that authority had not restricted relief to 20 per cent but had granted stay subject to deposit of only 10 per cent of demand based on order of assessment (AY. 2014-15, 2016-17, 2020-21)

Kunj Bihari Lal Agarwal v. PCIT (2024) 161 taxmmann.com 156 /464 ITR 744 (Raj)(HC)

Editorial: SLP is dismissed, Kunj Bihari Lal Agarwal v. PCIT (Central) (2024) 299 Taxman 92 / 464 ITR 767 (SC)

2434 **S. 220: Collection and recovery-Assessee deemed in default-Stay- Survey-Reassessment-Pendency of appeal before CIT(A)-High pitched assessment-Direction to pay 20 per cent of the demand-Non speaking order-Directed to pass a speaking order Stay was granted subject to deposit of only 10 per cent of demand. [S. 133A, 143(3), 147, 148, 156,226, 250, Art. 226]**

Assessment of assessee was reopened for relevant assessment years due to survey proceedings. Assessee appealed these orders, and during pendency of appeal, requested a stay of demand. Initially, authority ordered assessee to deposit 20 per cent of demand before considering appeal. Assessee challenged this decision, citing lack of judicial scrutiny. Court held that the demand raised fell within the definition of a high-pitched demand. The Principal Commissioner was completely guided by the administrative circulars issued by the Department and had failed to give any finding about the hardships pointed out by the assessee and had also not taken into consideration the factors such as prima facie case, balance of convenience and irreparable loss while passing the order. Hence the order was not liable to be sustained as it was a non-speaking and a non-reasoned order. Directed to pass reasoned order. Reconsideration. Referred *PCIT v. LG Electronics India Pvt. Ltd(2018) 12 ITR-OL 334 (SC) (2018) 18 SCC 447 ; 2018 SCC OnLine SC 1214,* wherein the Court held that the administrative circular will not operate as a fetter on the Commissioner since he is a quasi-judicial authority, and it will be open to the authorities, on the facts of individual cases, to grant deposit orders of a lesser amount than 20 per cent, pending appeal. (AY. 2014-15, 2016-17, 2020-21)

Kunj Bihari Lal Agarwal v. PCIT (2024) 464 ITR 738/ (2023) 152 taxmann.com 339 (Raj)(HC)

Editorial: Refer, Kunj Bihari Lal Agarwal v. PCIT (2024) 161 taxmmann.com 156 /464 ITR 744 (Raj)(HC), Kunj Bihari Lal Agarwal v. PCIT (Central) (2024) 299 Taxman 92 / 464 ITR 767 (SC)

S. 220: Collection and recovery-Assessee deemed in default-Stay- Transfer pricing-Arms' length price-Conditional stay-Order of Tribunal is affirmed. [S. 92C, 254(2A), Art. 226] 2435

Assessee-company, subsidiary of Mauritius based group company was part of Vodafone group. TPO observed that over a period from 2008-2015, direct and indirect shareholding of Vodafone Group plc in Vodafone India Limited had increased from 51. 58 per cent to 100 per cent. Accordingly, TPO made ALP adjustment on account of assignment of call/put options vested by assessee to its Mauritius based group concern, in as much 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. Consequently, Assessing Officer made high pitched adjustment and raised demand against assessee. Assessee-company filed stay application seeking a blanket unconditional stay on demands contending that Tribunal passed stay order in assessment year 2008-09 wherein assessee deposited substantial amount along with corporate guarantee and same ought to be reckoned for purpose of stay application for subsequent assessment year 2014-15. Assessee further claimed that deposits made in assessment year 2008-09 had been adjusted by revenue by way of protective adjustment for assessment year 2010-11. However, Tribunal granted a conditional stay by directing assessee to pay 20 per cent of disputed tax demand and furnish a corporate guarantee. It was noted that assessment year 2008-09, being a substantive assessment, assessment for year 2010-11 would be required to be treated as a protective assessment as put/call options exercised was 2. 34 per cent, however, events which triggered taxation in subsequent period were different as it pertained to 6. 01 per cent of holding in respect of call and put options being actually exercised. On writ, the Court held that recovery as sought to be made for relevant assessment year could not be in nature of protective recovery and, interim order passed by Tribunal on stay application was purely a discretionary order, and upheld. (AY. 2014-15)

Vodafone India Services (P.) Ltd. v. Asst. CIT (2024) 299 Taxman 497 (Bom.)(HC)

S. 220: Collection and recovery-Assessee deemed in default-Stay- Pendency of appeal before CIT(A)-In view of exceptional circumstances as noted in Office Memorandum dated 29-2-2016, assessee was directed to make payment of a sum of Rs. 40 lakhs and demand was to be stayed till disposal of appeals. [S. 226, 250, Art. 226] 2436

When the appeal is pending before the CIT(A) the assessee filed application for stay of demand. Assessing Officer directed assessee to make payment of

20 per cent of outstanding demand. On writ the assessee submitted that depositing 20 per cent of disputed amount would result in enormous financial burden/stress and would affect day to day functioning of assessee. Court held that in view of exceptional circumstances as noted in Office Memorandum dated 29-2-2016, assessee was directed to make payment of a sum of Rs. 40 lakhs and demand was to be stayed till disposal of appeals. CBDT Instruction No. 1914, dated 2-2-1993 and Office memorandum dated 29-2-2016. (AY. 2019-20)

Education Research and Development Foundation v. UOI (2024) 299 Taxman 463 (Cal.)(HC)

2437 **S. 220: Collection and recovery-Assessee deemed in default-Stay –Pendency of appeal before CIT(A)-Stay petition did not contain details relating to financial stringency, it was necessary to impose costs on assessee subject to payment of a sum of Rs. 10,000/- assessee would be permitted to submit a fresh stay application before assessing officer. [S. 226, 250, Art. 226]**

Assessee filed an appeal against an assessment order dated 29. 12. 2023 and subsequently petitioned for a stay, which was rejected due to non-payment of required 20% deposit per CBDT's office memorandum in F. No. 404/72/93- ITCC dated 29. 02. 2016 and F. No. 404/72/93-ITCC dated 31. 07. 2017. A second stay petition was dismissed by Commissioner of Income Tax (TDS). Assessee then filed a writ petition contending they could demonstrate financial stringency if given another opportunity. Court held that CBDT's office memorandum serve as guidelines for deciding stay applications and these guidelines do not replace need to assess whether applicant has established a prima facie case, balance of convenience, and financial stringency and since impugned order overlooked those considerations, interference was warranted. Since stay petition filed by assessee did not contain details relating to financial stringency, it was necessary to impose costs on assessee subject to payment of a sum of Rs. 10,000/- assessee would be permitted to submit a fresh stay application before assessing officer. CBDT's office memorandum in F. No. 404/72/93-ITCC dated 29. 02. 2016 and F. No. 404/72/93-ITCC dated 31. 07. 2017. (AY. 2016-17 to 2020-21)(SJ)

Tiruvannamalai District Central Co-operative Bank Ltd. v. CIT (TDS) (2024) 299 Taxman 492 (Mad.) (HC)

2438 **S. 220: Collection and recovery-Assessee deemed in default-Stay- Pendency of appeal before CIT(A)-Commissioner (Appeals) is directed to decide appeal expeditiously without insisting on recovery of demand and till pendency of appeal- demand shall be deemed to be stayed without depositing pre-deposit of 20 per cent. [S. 250, Art. 226]**

On writ allowing the petition the Court held that in view of Instruction No. 1914 issued under section 220 as read with OM [F. No. 404/72/93-ITCC], where appeal was pending before Commissioner (Appeals), Commissioner (Appeals) is directed to decide appeal expeditiously without insisting on recovery of demand and till pendency of appeal demand shall be deemed to be stayed without depositing pre-deposit of 20 per cent. Instruction no. 1914, dated 2-2-1913, Instruction No. 1914, dated 21-3-1996 and OM [F. No. 404/72/93-ITCC], dated 31-7-2017 (AY. 2023-24)

Anheuser Busch InBev India Ltd. v. CIT (TDS) (2024) 298 Taxman 450 (P&H) (HC)

2439 **S. 220: Collection and recovery-Assessee deemed in default-Stay- Pendency of appeal before CIT(A)-Granted stay till disposal of appeal subject to payment of 10 per cent of demand-Order of single judge is set aside. [S. 250, Art. 226]**

The assessee filed an application for stay as the appeal is pending before the CIT(A). The stay application was rejected and directed to pay 20 per cent of demand. On writ single judge dismissed the petition. On appeal division bench granted stay till disposal of appeal subject to payment of 10 per cent of demand. (AY. 2015-16)

Treadsdirect Ltd. v. ACIT (2024) 296 Taxman 28/ 465 ITR 350 (Mad.) (HC)

S. 220: Collection and recovery-Assessee deemed in default-Stay- Attachment of bank accounts--The Revenue was directed to lift attachment so far as pension of the assessee concerned and he was allowed to withdraw pension-Embargo on the petitioner from withdrawing any other amounts deposited in the attached account was continued with direction to appellate commissioner to dispose appeals within 3 months from the date of the High Court's order. [Art. 226] 2440

The bank accounts of the assessee were freezed for recovery of demand for A. Ys. 2007-08, 2008-09, 2010-11 and 2013-14. The appeals filed before the Tribunal for A. Ys. 2008-09 and 2010-11 were dismissed whereas the appeals for A. Y. 2010-11 and 2013-14 were restored to the file of Appellate Commissioner. The assessee, under writ filed earlier, was required to pay tax demand in instalments but could pay only first instalment. The Department declined to release the bank accounts attached. Hence, the assessee approached High Court for release of bank account. The High Court, after taking into consideration that the assessee besides pension also received amounts from other concerns, held that pension amount could not be attached. The High Court directed the Revenue to allow the assessee to withdraw pension and dispose pending appeals within 3 months from the date of the order. (AY. 2007-08, 2008-09, 2010-11, 2013-14)

G. K. Reddy v. DCIT (No. 1) (2023) 461 ITR 42/ 156 taxmann.com 729 (Mad)(HC)

Editorial: Refer G. K. Reddy v. Dy. CIT (No. 2) [2024] 461 ITR 104 (Mad)(HC)

S. 220: Collection and recovery-Assessee deemed in default-Stay- Attachment of bank accounts-Attachment of bank accounts- Attachment of pension account to recover the outstanding dues-not justified. 2441

On appeal the Division bench, directed the Revenue to lift the attachment of the bank account wherein the pension of the assessee was credited by observing that the entire pension amount with arrears was lying in pension account and only a certain sum lying in that account related to other amount. Hence, assessee was permitted to operate pension account and make transactions with amount lying therein, excluding sum which pertained to another amount. (AY. 2007-08, 2008-09, 2010-11, 2013-14)

G. K. Reddy v. Dy. CIT (No. 2) (2024) 461 ITR 104 (Mad)(HC)

Editorial: Refer, G. K. Reddy v. DCIT (2023) 461 ITR 42/ 156 taxmann.com 729 (Mad.) (HC)

S. 220: Collection and recovery-Assessee deemed in default-Fringe Benefit -Tax-Intimation and demand notice concerning FBT demand was ever served-Interest charged under section 220(2) is deleted. [S. 115WE, 115WJ, 220(2)] 2442

Assessee had paid both income-tax and FBT through a single challan dated 13-6-2008. These payments made through a composite challan were separately indicated in return of income filed for assessment year 2009-10. However, while processing return of income, entire amount was adjusted against income-tax liability, thereby, creating liability of FBT demand along with interest charged under section 115WJ. Assessee submitted that since no demand notice concerning interest component of FBT demand was served on assessee, liability did not ensue. CIT(A) held, that the dispute arise out of order passed for assessment year 2009-10, it cannot be subject matter of appeal for the assessment year 2017-18. On appeal the Tribunal held that it was clearly borne out

from record that assessee, indeed, had discharged its FBT liability for assessment year 2009-10 in June, 2008 itself and it was only department which had appropriated FBT liability towards income-tax. The reason for negating assessee's claim was that assessee was aware of tax liability uploaded by revenue on e-filing portal. However, mere reflection of demand on e-filing portal did not absolve revenue from properly serving intimation and demand notice qua FBT liability. Since revenue had failed to establish that intimation and demand notice concerning FBT demand was ever served on assessee, interest charged under section 220(2) on assessee is deleted. (AY. 2017-18)
Sony India (P.) Ltd v. Dy. CIT (2024) 205 ITD 194 /227 TTJ 619(Delhi)(Trib)

2443 **S. 221: Collection and recovery-Penalty-Tax in default-Recovery of tax-Company-Insolvency resolution-Overriding provisions of code-Failure of Department to claim dues before approval of resolution plan for one assessment year out of four assessment years-Additional claims after approval of resolution plan get extinguished-Notice and order unsustainable- Reassessment-Successful applicant cannot be called upon to liquidate dues of creditors, including statutory creditors not embedded in resolution plan Dues for period prior to date when resolution plan was approved cannot be recovered. Dues payable to creditors, including statutory creditors, for periods which precede date when Resolution Plan (RP) is approved, can only be paid as per terms contained in RP and, hence, demand recovery notices and consequent orders issued to assessee for a period preceding date of RP were unsustainable in law and, could not be enforced. [S. 143(3), 147, 148, 153A 156, 271(1)(c), Insolvency and Bankruptcy Code, 2016, S. 31, 238, Art. 226]**
The assessee had acquired Bhushan Steel Ltd. in terms of the corporate insolvency resolution proceedings under the Insolvency and Bankruptcy Code, 2016. Subsequently, notice was issued under section 221(1) calling upon assessee to deposit cumulative demand of Rs. 257. 80 crore for assessment years 2001-02, 2009-10, 2010-11 and 2013-14 and to show cause why penalty under section 221(1) be not imposed on assessee. Assessee sought to assail demand raised by revenue on ground that it concerned periods which preceded date of approval of Resolution Plan (RP) by NCLT and once RP was approved, all stakeholders were bound by terms contained therein and revenue was not any different from other creditors. On writ Court held that dues payable to creditors, including statutory creditors, for periods which precede date when RP is approved, can only be paid as per terms contained in RP. In cases where no provision is made for claims lodged on behalf of creditors, or there is failure to lodge a claim with Resolution Professional, all such claims stand extinguished. Successful applicant whose RP has been approved should not be put in a position where it is called upon to liquidate dues of creditors, including statutory creditors, which were not embedded in RP. A successful applicant is, in law, provided with a 'clean slate', therefore, dues for period prior to date when RP was approved cannot be recovered. Therefore, demand recovery notices and consequent orders issued to assessee for period preceding date of RP were unsustainable in law and, hence, could not have been enforced. Court held that the notice under section 221(1) of the 1961 Act dated August 28, 2018 and the order dated October 17, 2018, rejecting the assessee's objections were unsustainable and hence, could not be enforced. As regards recoveries sought to be made by the Department for

the assessment year 2001-02, the parties would have to abide by the final decision that would be rendered in the special leave petitions. Relied on *Ghanashyam Mishra and Sons P Ltd. v. Edelweiss Asset Reconstruction Co. Ltd(2021) 227 Comp 251 (SC) / (2021) 91 GSTR 28 (SC).* (AY. 2001-02, 2009-10, 2010-11, 2013-14)
Tata Steel Ltd. v. Dy. CIT (2023) 156 taxmann.com 104/ (2024)460 ITR 595 (Delhi)(HC)

S. 225: Collection and recovery-Stay of proceedings-Capital gains- Full value of consideration-Stamp valuation Assessee has right to get capital asset valued by Departmental Valuation Officer-Granted interim stay of coercive action pending disposal of the statutory appeal. [S. 45,50C, 56(2)(x), 143(3), 250, Art. 226] 2444
The assessment was completed valuing the property as per the stamp valuation without waiting for the valuation of Departmental Valuation Officer. On writ the Court held that, the conclusion had been drawn without awaiting the valuation report from the Departmental Valuation Officer. As a consequence, in spite of the assessee asserting and reiterating that the sale consideration specified in the sale deed represented the fair market value, the assessee had been put to prejudice without any material to support the conclusion that the guidelines value represented the fair market value. Therefore, the assessee is entitled to an interim stay of coercive action pending disposal of the statutory appeal. Section 50C of the Income-tax Act, 1961 confers a vital statutory right on an assessee with regard to requesting for the valuation of an asset by the Departmental Valuation Officer. (AY. 2018-19)
N. Amudha v. ITO (2024)467 ITR 299 (Mad)(HC)

S. 225: Collection and recovery-Stay of proceedings-Pendency of appeal before CIT(A)-Deposit of 20 Per Cent of demand-Liberty reserved to assessee to request Commissioner (Appeals) to consider merits of case expeditiously. [S. 226,250, Art. 226] 2445
The assessee's application for stay of the demand was rejected during the pendency of appeals against the assessment orders for the assessment years 2009-10 to 2011-12, an interim order was passed by the High Court on a writ petition staying the enforcement of the demand pursuant to the demand notices in the light of the submission that 20 per cent of the demand had been deposited. The assessee was reserved liberty to request the Commissioner (Appeals) to expeditiously consider the merits of the case against the assessment orders in the light of the orders of the Division Bench *Vodafone Idea Ltd. v. Dy. DIT (IT) (2023) 457 ITR 189 (Karn)(HC)* and disposal of the writ petitions by the similar assessees in other writ petitions. (AY. 2009-10 to 2011-12)
Saudi Telecom Company v. CIT (IT) (2024)462 ITR 168 (Karn)(HC)

S. 226 : Collection and recovery-Modes of recovery-Tax recovery officer-Reassessment-Strictures-After period of seventeen years- Auction by Income tax Authority-Tax recovery officer-Hindu undivided family-Pendency of appeal-Fictitious demand-Auction is nullity-TRO should cancel recovery certificate on being informed that payment had been made by concerned defaulter-Directed to pay the compensation-Where a reference has been admitted by High Court against an order of Tribunal, prudence demands to keep away from conducting auction of properties for purpose of recovery-An auction conducted under the Income-tax Act, 1961 cannot be put on the same footing as that 2446

of an auction being conducted for execution of a decree by the Court or elsewhere in public as it would be in clear distinction of income-tax default auction-Income tax department is directed to pay cost of Rs 1 lakh to the petitioner. [S. 147, 224, 225(3), 256(1), 256(2), Transfer of Property Act, 1882, S 52, Rule 56, 60, 61, 62, of schedule, Art. 226, 300A]

Assessee-HUF received a donation of Rs. 5 lakhs from an individual. Assessment was completed which reflected the said receipt. However, ITO after seventeen years, reopened assessment under section 147 and held that demand of Rs. 5 lakhs had emanated from assessee. Assessee's appeal against said order was allowed by AAC as well as Tribunal. On reference to High Court, matter was set aside to Tribunal. Tribunal thereafter, passed ex parte order upholding assessment. Assessee filed reference against said order under section 256(2). Meanwhile, recovery proceedings were initiated and assessee submitted objections that, a sum of Rs. 2,45,000 had already been deposited and a sum of Rs. 1,20,000 had already been recovered and, thus, same was to be deducted from total shown in recovery certificate to TRO. TRO had rejected objections and conducted auction of said property and sold same and recovered disputed sum. Assessee filed writ petition and while writ was pending, High Court answered reference in favor of assessee and entire proceedings under section 147 were held to be bad in law. Court held that once sum of Rs. 2,45,000 was deposited, recovery certificate was required to be revised. TRO should have withheld proclamation and further proceedings of auction, particularly when demand notice and recovery certificate were based on order of Tribunal which had been set aside by High Court. Since, ultimately it had been found that there was no tax requirement to be paid, writ petition is allowed and order was to be set aside and department is directed to restore properties of assessee from auction purchaser and compensation should also be paid to him by department. TRO has power even to cancel recovery certificate on being informed that payment has been made by concerned defaulter. Where a reference has been admitted by High Court against an order of Tribunal, prudence demands to keep away from conducting auction of properties for purpose of recovery. An auction conducted under the Income-tax Act, 1961 cannot be put on the same footing as that of an auction being conducted for execution of a decree by the Court or elsewhere in public as it would be in clear distinction of income-tax default auction. Court also directed the Income tax department is directed to pay cost of Rs 1 lakh to the petitioner. (AY. 1946-47)

Gokal Chand Rattan Chand v. UOI (2024)471 ITR 337/ 163 taxmann.com 222 (P&H) (HC)

2447 **S. 226: Collection and recovery-Modes of recovery-Matter pending before CIT(A)-Stayed further recovery of proceedings till the disposal of the appeal. [S. 143(3) 254, 263, Art. 226]**

On writ the Court held that if the assessment was set aside, the assessee would be entitled to the refund along with interest payable as per the statute or that paid in the cash credit account, whichever was higher and if not, the assessee would be saved from the interest on the amount recovered in the intervening period. Therefore, it was not required to direct refund of the 20 per cent already recovered from the assessee. There shall be no further recovery based on the earlier assessment order till the appeal was disposed of by the CIT(A). (AY. 2015-16)

SIS Prosegur Holding Pvt. Ltd. v. PCIT (2024)471 ITR 403 (Patna) (HC)

S. 226: Collection and recovery -Modes of recovery -Stay Direction to pay 15 per cent of total demand -Condition imposed on the assessee by the Single Judge to remit 15 per cent of the total demand while granting stay of recovery proceedings is set aside; rest of the directions in the impugned judgment are not interfered with. [S. 250, Art. 226] 2448

Condition imposed on the assessee by the Single Judge to remit 15 per cent of the total demand while granting stay of recovery proceedings is set aside; rest of the directions in the impugned judgment are not interfered with.

Diana Gomez v. CIT (A) (2024) 341 CTR 581 /241 DTR 45 / 8 NYPCTR 428 (Ker)(HC)

Editorial: Diana Gomez v. CIT (A) (2024) 341 CTR 583 / 241 DTR 47 (Ker)(HC) is modified.

S. 226: Collection and recovery -Modes of recovery -Stay -Direction to pay 15 per cent of total demand. [S. 250, Art. 226] 2449

On writ CIT(A) is directed to consider and pass necessary orders on the application for condoning the delay as well as stay application expeditiously; demand in pursuance of the assessment order is stayed till the decision on application for condonation of delay and stay petition subject to making deposit of 15 per cent of the total demand as per the assessment order.

Diana Gomez v. CIT (A) (2024) 341 CTR 583 / 241 DTR 47 / 8 NYPCTR 429 (Ker) (HC)

Editorial: Diana Gomez v. CIT (A) (2024) 341 CTR 581 /241 DTR 45 / 8 NYPCTR 428 (Ker)(HC), order is modified.

S. 226: Collection and recovery -Modes of recovery -Stay -Pendency of appeal -Prima facie case -Pre-deposit of 20 percent of demand is not mandatory -Matter remanded to the AO for reconsideration. [S. 250, Art. 226] 2450

As the appeal is pending before CIT(A), the assessee moved an application for stay of demand. PCIT directed to pre deposit of 20 percent of demand. On writ the Court held that, pre-deposit of 20 percent of demand is not mandatory. Matter remanded to the AO for reconsideration. Referred, *National Association of Software and Services Companies (NASSCOM) v. Dy. CIT (E) (2024) 240 DTR 265 (Delhi) (HC)* (AY. 2010-11 to 2020-21)

Sushen Mohan Gupta v. PCIT (2024) 340 CTR 57 / 240 DTR 281 / 161 Taxmann.com 257 (Delhi)(HC)

S. 226: Collection and recovery -Modes of recovery -Recovery of tax -Attachment and sale of immovable property -Limitation -Assessment order was passed in final year ending on 31-3-2010 -Attachment of property on 20-12-2018 and proclamation of sale on 27-3-2019-Barred by limitation[S. 245-I, Chapter XVII of the Income-tax Act, 1961, Second Schedule, R. 68B, Art. 226] 2451

Held, that in view of the revision order and the consequential revised assessment order it became conclusive in terms of the provisions of Chapter XX to the Income-tax Act, 1961, in the financial year ending March 31, 2010. In the facts and circumstances of the case, rule 68B would apply. The attachment of the immovable property was made on December 20, 2018 and the notice of proclamation of sale was made on March 27, 2019. The attachment and proclamation of sale were barred by limitation. (BP. 1997-98 to 2003-04) (SJ)

Pabitra Kumar Hira v. UOI (2024)467 ITR 108 / 167 taxmann.com 664 /341 CTR 601 / 243 DTR 497 (Gauhati)(HC)

2452 **S. 226 : Collection and recovery-Modes of recovery -Recovery of tax -Appellate Tribunal -Interim order -Conditional stay of demand of tax and interest on demand -Exercise of discretion by Tribunal neither perverse nor illegal and hence not interfered with -On facts recovery is not protective in nature. [S. 144C, 254(1),254(2A), Art. 226]**

On writ against the interim order of the stay by the Tribunal, the Court held that the orders passed by the Tribunal in respect of the earlier years would not assist the assessee, firstly because for the assessment year 2011-12 when the percentage of transactions in respect of which the put or call option was exercised was 2. 34 per cent of the total holding in respect of which an assessment order was passed applying the provisions of section 92C and an amount of Rs. 50 crores was directed to be deposited at the interim stage for stay of the assessment order. For the assessment year 2012-13, the proceedings were pending before the court and the assessee was directed to deposit an amount of Rs. 100 crores. Both such orders were accepted by the assessee and the amount was deposited, without any grievance. That the proceedings in the miscellaneous application were concerned with the interim order passed by the Tribunal on the stay application by the assessee which was a discretionary order and the discretion had not been exercised by the Tribunal perversely or illegally. Although the order in so far as it directed the assessee to deposit an amount of Rs. 230 crores, being the lowest or minimum amount of 20 per cent of the disputed tax demand, was in consonance with the provisions of section 254(2A), the Tribunal ought not to have directed the assessee to furnish a corporate guarantee from an associate company which had unencumbered assets in India in excess of the balance of the disputed demands, i. e., Rs. 900 crores, particularly considering the interim orders passed for the prior years. Such condition, therefore, was substituted by directing the assessee to furnish a corporate guarantee of its parent company as accepted by the Revenue in the assessment year 2008-09. That the contention that the recovery being in the nature of a protective recovery, it was not permissible for the Tribunal to pass the order in question considering the decisions of the order passed for the assessment year 2008-09 as substantive year could not be accepted though it was factually correct since the events for taxation in the subsequent period were different, as it pertained to 6. 01 per cent of the holding in respect of call and put options being actually exercised. If such contention was accepted, then orders that had been accepted by the assessee in depositing the demands for the assessment years 2011-12 and 2012-13, which were Rs. 50 crores and Rs. 100 crores, respectively, could not have been passed. On the facts, considering what had transpired for the earlier assessment years 2008-09, 2010-11, 2011-12 and 2012-13, the contention that the assessment for the assessment year 2014-15 being a high-pitched assessment, such demand would warrant a blanket stay, could not be accepted. Except for the modification in respect of condition No. (ii) as imposed by the Tribunal, the order was not interfered with otherwise. (AY. 2014-15)

Vodafone India Services Pvt. Ltd. v. Asst. CIT (2024)467 ITR 261 (Bom)(HC)

S. 226: Collection and recovery -Modes of recovery –Attachment -Joint account holder -Primary account holder -No separate notice is required for having joint account as secondary holder in view of section 226(3)(iii) [S. 226(3)(iii), Art. 226] 2453

The petitioners were farmers and were doing agricultural activities. They had sold agricultural goods out of the produce from the joint holding land with their uncle KBG and out of the sale proceedings, certain amount was deposited in the joint account of the petitioners with their uncle Kirit Bachubhai Gamit. When the petitioner approached the Bank for withdrawal of the said amount, they were informed that there was attachment over the joint account for outstanding of their uncle by the Income Tax Department. The petitioners had challenged the issuance of notice under section 226(3) whereby the authority had made attachment over the account. When impugned notice under section 226(3) is issued for recovery of the outstanding dues of Kirit Bachubhai Gamit who is defaulter in making payment of dues to the department, merely because the petitioners were joint account holders, no separate notice is required to be issued to the petitioners for having joint account as secondary holder in view of provisions of section 226(3)(iii). Court held that on perusal of the provisions of section 226(3)(iii), it is clear that notice is required to be forwarded to the assessee from whom money is due or may become due to the assessee or any person who holds or may subsequently hold money for or on account of the petitioner. Meaning thereby notice is required to be issued, as per aforesaid provisions, from whom amount is due and not to joint account holder. If the petitioners have any grievance against recovery of the above dues in the account of their uncle along with them, they can initiate necessary proceedings in accordance with law before appropriate forum. Petition is dismissed.
Pratik Chimanbhai Gami v. UOI (2024) 299 Taxman 429 (Guj.) (HC)

S. 226: Collection and recovery -Modes of recovery -Stay -Pendency of appeal -Directed to dispose the appeal within three months. [S. 250, Art. 226] 2454

On a writ petition challenging the recovery made from the assessee in the matter of demand under various assessments which were in appeal. Allowing the petition the Court held that on the peculiar circumstances that the appeals were pending since 2016 and 2019 and recoveries of tax had been made long back, directions were issued to decide the pending appeals within a period of three months.
Bagaria Trade Impex v. ITO (2024)463 ITR 243 (Raj.) (HC)

S. 226: Collection and recovery -Modes of recovery -Attachment of property -Bank-Enforcement of security interest- Priority of debts -Property mortgaged to bank before attachment by Department Bank taking possession of property -Order for attachment of property is quashed -Tax Recovery Officer is directed to lift attachment and Sub-Registrar to strike name of Tax Recovery Officer from encumbrance certificate. [S. 281, Securitisation and Reconstruction Of Financial Assets And Enforcement Of Security Interest Act, 2002, S. 26, Art. 226] 2455

Allowing the petition against the tax recovery certificate issued by the Tax Recovery Officer, the Court held that since the mortgage to the bank was prior to the attachment of the property in question by the Department, the orders of attachment were quashed. The 1961 Act has not provided any first charge of its debts. But there is a first charge over the bank's debt under the 2002 Act and the amendment of section 26 of the 2002

Act is applicable to pending Lis. Therefore, even though it was a statutory duty to attach property by the Department, as and when the bank claimed and exercised its first charge over the property, the Department was liable to issue a no-objection certificate and also lift the attachment. Consequently, the Tax Recovery Officer was directed to lift the attachment and the Sub-Registrar was to strike the name of the Tax Recovery Officer from the encumbrance certificate with respect to the property in question. (AY. 2008-09 to 2012-13)
City Union Bank Ltd v. Tax Recovery Officer (2024)463 ITR 291 (Mad.) (HC)

2456 **S. 226: Collection and recovery -Modes of recovery -Stay of recovery -Re-agitate issue before High Court -Writ petition is dismissed. [S. 226(3), Art. 226]**
Petitioner -company carried out work of setting up, management and operating of 1542 Common Service Centres (CSC) in central and southern Assam for respondent no. 3. Assessee filed petition seeking issuance of appropriate writ, order or direction to respondent no. 3 to release outstanding payment along with interest on delayed payment at rate of 15 per cent per annum for outstanding dues in lieu of work carried out by petitioner. Petitioner contended that respondent No. 3 under garb of notices dated 08. 01. 2011 and 04-07-2014 under section 226(3) were not making payment of outstanding dues and therefore, notices issued by revenue was under challenge in present petition. Court held that, since issue with regard to recovery had been put to rest in earlier two rounds of litigation and petitioner was trying to re-agitate issue before High Court by filing a petition, it would not be maintainable and hence, dismissed.
Arth Rural Connect Services Ltd. v. UOI (2024) 298 Taxman 392 (MP)(HC)

2457 **S. 226: Collection and recovery-Modes of recovery-Capital gains -Full value of consideration-Stamp valuation -Pendency of appeal-Directed to the recovery till disposal of the appeal by the CIT(A). [S. 50C, 56(2)(x), 250, Art. 226]**
Assessing Officer issued notices to assessee calling upon it to show cause as to why difference between income disclosed in return and guideline value of property purchased by assessee should not be treated as income from other sources under section. Assessee reiterated that document value represented fair market value and a reference should be made to Departmental Valuation Cell for determination of fair market value. However, without waiting for valuation report, assessment order was passed. Assessment order was subject to statutory appeal. On writ the Court granted W interim stay of coercive action pending disposal of statutory appeal. (AY. 2018-19)
Namudha v. ITO (2024) 297 Taxman 243 (Mad.) (HC)

2458 **S. 226: Collection and recovery -Modes of recovery -Stay of recovery proceedings -Pendency of appeal before CIT(A) -Directed to deposit Rs 10 lakhs. [Art. 226]**
On writ the Court held that the assessee was engaged in the manufacture of handloom sarees, the order passed by the appellate authority requiring the assessee to pay 20 per cent. of the tax demand was on the higher side. The assessee should deposit Rs. 10 lakhs instead of 20 per cent. which came to around Rs. 47,89,456) of the demand ordered by the appellate authority. (AY. 2018-19)
Ramasamy Rajkumar v. PCIT [2023] 155 taxmann.com 579 / (2024)460 ITR 669 (Mad.) (HC)

S. 234A: Interest -Default in furnishing return of income -Marginal delay in filing of return -Interest u/s 234A is waived -Advance tax -Deferment of advance tax -Waiver or reduction -Board's F. No. 400/129/2002-IT(B), dt. 26th June, 2006 -CBDT Circular, does not specifically deal with waiver of interest under S. 234B and 234C - Does not specifically deal with waiver of interest -No impediments operating against the assessee from paying the advance tax within the time line under S. 211. [S. 119, 211, 234B, 234C, Art. 226] 2459

On writ the assessee contended that the assessee is entitled for waiver of interest under S. 234A, for the asst. yrs. 2008-09 and 2009-10 on similar lines for the asst. yrs. 2005-06 and 2007-08 deserves to be accepted, as there is only marginal delay in filing the returns after the audit report was received by the assessee from the office of Jt. Director of Co-operative audit on 22nd March, 2011 for the asst. yr. 2008-09 and on 31st Jan., 2012 for the asst. year. 2009-10. The returns for these years were filed by the assessee on 31st May, 2011 and 2nd April, 2012, respectively. Therefore, to the extent of rejection of waiver of interest under S. 234A the order warrants interference. Court held, that the interest under S. 234B and 234C are concerned, they pertain to belated payment of advance tax under S. 210 within the stipulated period under S. 211 no case is made out by the assessee for waiver of interest notwithstanding the reason stated by the assessee in the affidavit. CBDT Circular No. 400/129/2002-IT(B), dt. 26th June, 2006, does not specifically deal with waiver of interest under S. 234B and 234C. There were no impediments operating against the assessee from paying the advance tax within the time line under S. 211. Payment of interest on the tax that was payable on the date specified in S. 211 is axiomatic in the sense it has to be paid by the due date prescribed under the statute and therefore, there cannot be any waiver either on the ground of equity or on a reading of the Circular dt. 26th June, 2006, bearing reference No. 400/129/2002-IT(B). Interest u/s. 234B and 234C cannot be waived. (AY. 2005-06, 2007-08 to 2009-10) (SJ)

Chandrasekarapuram Co-Operative Whole Sale Stores Ltd. v. CCIT (2024) 161 taxmann.com 807 / 341 CTR 575 / 242 DTR 554 / 8 NYPCTR 541 (Mad.)(HC)

S. 234A: Interest -Default in furnishing return of income -Self assessment tax paid was to be deducted from the tax payable as per the assessment order for the purposes of calculating interest payable -No substantial question of law. [S. 140A, 260A] 2460

The Tribunal held that the self-assessment tax paid was to be deducted from the tax payable as per the assessment order for the purposes of calculating interest payable u/s. 234A. High Court dismissed the appeal of the Revenue on the ground that no substantial question of law arose. (A.Y. 1996-97)

CIT v. I. T. C. Ltd. (2015) 64 taxmann.com 486 / (2024) 461 ITR 449 (Cal.) (HC)

Editorial: CIT v. I. T. C. Ltd. (2024) 461 ITR 446 (SC), order of High Court is set aside and remanded for fresh disposal on merits.

S. 234B: Interest -Advance tax -Non-Resident -Entire tax was deductible at source -Not permissible to charge interest -Review petition is dismissed. [S. 9(1)(1)] 2461

Dismissing the appeal of the revenue, the Court in *CIT(IT) v. ZTE Corporation (2021) 130 taxmann.com 128 (Delhi)(HC)* 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. Review petition against SLP rejection is dismissed. (AY. 2013-14)
CIT (IT) v. ZTE Corporation (2024) 296 Taxman 571 (SC)
Editorial: Refer, CIT (IT) v. ZTE Corporation (2021) 282 Taxman 304 (SC)

2462 **S. 234B: Interest -Advance tax -Application of seized or requisitioned assets -Seized cash can only be adjusted against tax liability of person from whom cash was seized and till date of framing of assessment of parties -Revenue had no authority to treat cash seized from possession of one person as cash belonging to another person. [S. 132(4), 132B (3), 140A, 153A, 260A]**
A search was conducted at premises of assessees, and one Sarup Chand. Department discovered cash in Sarup Chand's accounts. Both Sarup Chand and assessees vide an affidavit claimed that seized money actually belonged to assessees as part of house sale proceeds. Assessees requested that cash be adjusted against their tax liabilities. However, until assessment of both parties was completed, cash was treated as belonging to Sarup Chand. Revenue eventually adjusted cash against assessees tax liability but charged interest for delayed payment of tax under section 234B of the Act. Assessee contended that cash should have been adjusted earlier as advance tax and that no interest should be charged. The AO has not accepted the contention of the assesse. On appeal the CIT(A) held that the money seized from Sarup Chand could not be adjusted against the assesee's advance tax liabilities. Tribunal affirmed the order of CIT(A). On appeal, the Court held that in view of sub-section (3) of Section 132B, person from whose custody assets are seized is entitled to adjustment thereof against tax liability and as per explanation, existing liability does not include advance tax. Thus, contention of assessees that amount seized from possession of another person should be treated as advance tax paid by assessees was misconceived. Since seized cash was concededly lying deposited in bank account of Sarup Chand therefore, till determination of liability of all parties, there was no question of adjustment of seized cash against liability of assessees and accordingly, they were liable to pay interest in terms of Section 234B on account of delayed payment on advance tax. Appeal of assessee is dismissed. (AY. 2007-08)
Kamla Mehta v. CIT (2024) 300 Taxman 625/ 341 CTR 449/ 243 DTR 244 (P&H) (HC)
Shelly Mehta v. CIT (2024) 300 Taxman 625/ 341 CTR 449/ 243 DTR 244 (P&H) (HC)

2463 **S. 234B: Interest -Advance tax -Representative -Investment fund -Passing through taxation -Entitle to credit for tax deducted at source -Assessing Officer to Charge correct interest after giving effect to Commissioner (Appeals) order -CBDT, Circular No. 13 of 2014 dt. 28-7-2014 (2014) 366 ITR 2 (St). [S. 160(1)(iv), 164(1), 234C, R. 37BA (2)]**
Held that the assesse is entitled to credit for tax deducted at source and advance tax as claimed by the assessee in the return of income. However, while allowing the credits for prepaid taxes, the Assessing Officer has to ensure no similar credit for tax deduction at source or advance tax was availed of by the beneficiaries therein before allowing the credit. The Assessing Officer shall also ensure that the jurisdictional High Court had not taken any contrary view on the subject matter. That with regard to charging of interest

under sections 234B and 234C, since they were consequential in nature, the Assessing Officer was to charge correct interest after giving effect to this order. (AY. 2015-16)
Investcorp Real Estate Yield Fund v. ITO (2024)114 ITR 39 (SN)(Mum.) (Trib)

S. 234B: Interest-Advance tax -Appropriate credit for taxes paid before assessment or self-assessment tax -Eligible for consequential relied -Interest on refund -Refund was more than 10 Per Cent of tax determined after taking into account relief under Section 234B -Entitled to refund. [S. 140A, 244A] 2464

Held, that considering the acceptance of the fact by the Assessing Officer in the remand report the assessee was not granted the credit of taxes while calculating the interest under section 234B of the Act and that too without referring to any adverse comment in the remand report, the Assessing Officer was to give the credit of the taxes paid by the assessee. According to the computation sheet given in the remand report and the interest based on the chart given by the assessee. The Assessing Officer is directed to give credit of payment of tax for which credit was not granted while computing the interest under provisions of section 234B of the Act. The assessee is denied the benefit of the interest under section 244A of the Act only on the ground that the net refund due and calculated by the lower authority was less than 10 per cent of the total demand raised upon the assessee. Since the assessee is eligible to get relief under section 234B of the Act for an amount of Rs. 1,43,33,259 after that credit the resultant figure of refund was more than 10 per cent of the tax determined and the assessee is eligible to receive the interest under section 244A of the Act in accordance with the law. (AY. 2013-14)
Miraj Developers Ltd. v. CIT (Appeals) (2024)113 ITR 531 /229 TTJ 60/ 236 DTR 353 (Jodhpur)(Trib)

S. 234B: Interest -Advance tax -Search -Cash and fixed deposit receipts -Release of seized assets -Application was made for release/adjustment of cash and FDRs -No interest can be levied in the course of regular assessment -Payment of interest on seized FDRs -FDRs cannot be treated as money as referred in section 132B(4)(b) and since by mere seizure of FDRs, assessee had not suffered any pecuniary loss by way of loss of interest, no interest under section 132B(4) could be granted to assesse. [S. 132, 132B(4)(b)] 2465

A search and seizure action under section 132 was conducted at premises of assessees on 18-3-2010. During course of search, cash and fixed deposit receipts [FDRs] were seized. Assessees had made an application for release/adjustment of cash and FDRs on 28-4-2010. Assessing Officer passed an assessment order under section 143(3) and levied interest under section 234B without making any adjustment of seized cash and FDRs against tax liability of assessees. Commissioner (Appeals) held that assessees were entitled to adjustment of seized Cash/FDRs against self-assessment tax liability from date on which period of 120 days was over in terms of section 132B and had upheld action of Assessing Officer in charging interest under section 234B. On appeal the Tribunal held that application made by assessees was well within prescribed period, 30 days from end of month in which assets were seized. Further, seized cash and FDRs were from disclosed source of income from respective assessees only. As per section 132B(1), Assessing Officer ought to have adjusted seized cash and FDRs against tax liability while framing regular assessment and, therefore, there was no question of levy

of interest under section 234B up to 15-9-2010. Therefore, Commissioner (Appeals) was not justified in confirming interest charged under section 243B. The Assessing Officer is directed to rework computation in accordance with provisions of law. Tribunal also held that FDRs cannot be treated as money referred in section 132B(4)(b). Accordingly, mere seizure of FDRs, assessee had not suffered any pecuniary loss by way of loss of interest, no interest under section 132B (4) could be granted to assessee. (AY. 2010-11)
Nune Trimurtulu Rayudu v. ACIT (2024) 206 ITD 274 (Rajkot) (Trib.)

2466 **S. 234C: Interest -Deferment of advance tax -Failure of the payer to deduct tax source -Interest on certain bonds and Government securities -Assessee cannot be penalised by levy of interest. [S. 143(1), 194LD]**
Held that for failure on the part of the payer to deduct tax at source the assessee cannot be penalised for levy of interest. (AY. 2021-22) (ITA No. 2505 /Mum/ 2024 dt. 14-8-2024)
Standard Chartered Bank (Singapore) Ltd v. DCIT (2024) BCAJ-October-P. 52 (Mum.)(Trib)

2467 **S. 234E: Fee-Default in furnishing the statements -Deduction of tax at source -Delay in filing statement of tax deducted at source -late fee -Position prior to 1-6-2015 -Amendment of section200A with effect from 1-6-2015 -Late fee could be charged in respect of delay prior to amendment. [S. 200A(1)(c), 206C (3), Art. 226]**
The liability to pay a fee for delay in filing the statement of tax deducted at source gets attracted under sub-section (1) of section 234E of the Income-tax Act, 1961 once a person fails to deliver or cause to be delivered a statement within the time prescribed in sub-section (3) of section 200 or the proviso to sub-section (3) of section 206C of the Act and the liability shall continue for every day during which the failure continues. Sub-section (4) of section 234E of the Act provides that these provisions would apply to the statement referred to in sub-section (3) of section 200 of the Act which is to be delivered or cause to be delivered on or after July 1, 2012. Section 200A(1)(c) was amended with effect from June 1, 2015. Section 234E of the Act by itself creates a liability and the liability to pay the late fee is not dependent on section 200A(1)(c) of the Act which only prescribes the recovery mechanism and reflects the true intent and purpose of section 234E. Hence, late fee under section 234E can be levied for a delay prior to June 1, 2015. (AY. 2010-11 to 2015-16)
Conceria International Pvt. Ltd. v. ITO [2023] 157 taxmann.com 335/ (2024) 464 ITR 92/ 337 CTR 237 (Mad.) (HC)
Editorial: Dundlod Shikshan Sansthan v. UOI (2016) 284 CTR (Raj) 175: (2016) 131 DTR 382 (Raj) (HC) and Rajesh Kourani v. UOI (2017) 297 CTR 52/ 156 DTR 129(Guj) (HC) (2017) concurred with; Fatheraj Singhvi v. UOI (2016) 142 DTR 281 / 289 CTR 602 (Karn.) (HC) dissented from.

2468 **S. 234E: Fee-Default in furnishing the statements -Position prior to 31-3-2015- Quarterly TDS statement -No enabling provision under section 200A for raising demand in respect of levy of fee under section 234E for a period prior to 31-03-2015. [S. 200A, Form No 24Q]**
Assessee filed quarterly TDS statement (Form 24Q) for two quarters of relevant financial year 2012-13 belatedly. Assessing Officer (TDS CPC) imposed late fees under section 234E along with interest. Tribunal held that there is no enabling provision in Act under

section 200A for raising demand in respect of levy of fee under section 234E for a period prior to 31-03-2015, levy of fee is deleted. (AY. 2013-14, 2014-15)
Commander Works Engineers v. ITO (2024) 207 ITD 152 (Amritsar) (Trib.)

S. 237: Refunds-Disability pension-Retired Officer of Indian Army -Arrears of disability pension received in December 2008 -Entitled to exemption -Strictures -Court directed the Revenue for refund of tax paid by assessee with interest at 9 per cent per annum within one month with costs of RS. 1 lakh. If the payment was not made within the stipulated period interest was to be paid at 18 per cent per annum from the date of entitlement till actual payment -Delay of 279 days, SLP of Revenue is dismissed. [Pension Regulations for the Army, Rule, 173, Art. 136] 2469

The assessee is a disabled officer of the Indian army who was commissioned on March 23, 1975 and retired on November 31, 2008 with service pension. The assesse filed revised return within 20 days of the receipt of the amount on implementation of the court's orders whereby he was granted arrears of disability pension and this was within the time stipulated in the Central Board of Direct Taxes Circular No. 2009 of 2015. The assessee's claim to refund of the Income-tax for the past years on his exempted income of disability pension was rejected. The assessee again approached the authority through the portal of the Government of India and even this was rejected. On a writ petition allowing the petition, the Court held that Circular No. 13 of 2019 dated June 24, 2019 ([2019] 415 ITR (St.) 209), Supreme Court order dated August 30, 2019, Circular No. 210 dated February 20, 2020 and Circular No. 211 dated March 3, 2020 were not disputed by the Department. No explanation has been given as to why under Circular dated July 2, 2001, once the disability pension was exempted from Income-tax why this benefit was not given to the assessee. Hence, the order is not valid. Court directed the Revenue for refund of tax paid by assessee with interest at 9 per cent per annum within one month with costs of Rs. 1 lakh. If the payment was not made within the stipulated period, interest was to be paid at 18 per cent per annum from the date of entitlement till actual payment. SLP of Revenue is dismissed as the delay of 279 days is not condoned.
PCIT v. Jaswinder Pal Singh (2024)466 ITR 249/300 Taxman 104 (SC)
Editorial: PCIT v. Jaswinder Pal Singh (2023) 456 ITR 410 /152 taxmann.com 103 / 334 CTR 319 (P& H) (HC)

S. 237 : Refunds-Pendency of appeal before DRP -No recoverable demand -Refund cannot be withheld to be adjustment towards anticipated demand. [S. 144C(5), 220, 254(1), Art. 226] 2470

On the basis of order of Tribunal, the assessee was entitled for refund for the assessment year 2013-14. Assessing Officer refused to refund amount on grounds that proceedings for subject assessment year were pending before DRP and in interregnum refund payable had been adjusted towards what could be a possible demand for assessment proceedings pending for reconsideration for assessment year 2010-11. On writ the Court held that since there is no recoverable demand from assessee as of today and adjustment was in anticipation of conclusion of a particular proceeding in a possible manner without due process and a levy could not be unless, it is with authority of law, Assessing Officer is directed to refund amount to assessee. (AY. 2013-14)
IBM India (P.) Ltd. v. Dy. CIT (2024) 297 Taxman 105/338 CTR 869 (Karn.)(HC)

2471 **S. 237: Refunds -Central Board of Direct Taxes –Refund of tax deduction at source -Less than Rs. 5 lakhs -Condonation of delay -Application seeking condonation of delay in filing the revised return -Refund in revised return is based on Form 16A for TDS on rental income, and the claim was not supplementary as per Instruction No. 12 dated 30-10-2003 -Application for condonation of delay in filing the revised return is directed to be allowed -Entitle to refund which is within prescribed upper limit. [S. 119(2)(b), 139(4), Art. 226]**

The application for condonation of delay of application for refund is rejected by the Commissioner. On writ, the assessee's contended that the assessee had filed the revised return based on Form 16A, which showed the TDS on rental income, and that he had declared a higher loss in the revised return. He also contended that the Circular dated 30.10.2003, which was applicable to his case, had increased the limit of the refund amount from Rs. 1,00,000 to Rs. 5,00,000, and had relaxed/modified the conditions stipulated in the earlier circular which the revenue purportedly made a reference to, laying restrictive conditions on such subsequent claim for refund/losses. He contended that his claim was for a refund of TDS only, and not for any additional income and that he had filed the application for condonation of delay in good faith. The revenue contended that the assessee's claim was supplementary, as he had filed the revised return after the original return had been processed, and that he had not disclosed the rental income or the TDS in the original return. Thus, rejection is valid. Further, the revenue relying on the Circular dated 12.10.1993, (which laid down the conditions for condoning the delay in filing the return and granting refund) rejected the application for condonation. The assessee contended that the revenue failed to draw any reference to the circular dated 30.10.2003 which was effective and in force on the given day when the impugned order was passed. The Hon'ble High Court allowed the writ petition filed by the assessee, who sought condonation of delay in filing a revised return for the assessment year 2001-02, claiming refund of tax deducted at source (TDS) on rental income. The court held that the revenue authorities had failed to consider the Instruction No. 12 of 2003, dated 30.10.2003, which had relaxed the conditions for granting refunds in such cases. The court also held that the assessee had not made any additional income while filing the revised return and that his claim was not supplementary in nature as per the said Instruction given that the refund claim was based on Form 16A for TDS on rental income, which was part of the original scope of income reporting. Directed to refund the tax deducted at source. (AY. 2001-02)

Sri Hari Rao & Co v. CCIT (2024)461 ITR 363/161 taxmann.com 592 /339 CTR 94 (Telangana)(HC)

2472 **S. 237: Refunds -Interest on refunds -Public money -Technical issues at the Centralized Processing Center (CPC) -The High Court reprimanded the Department, stating that the interest is payable in law until the date of refund, and the Department failed to realise that it is the public money used to pay interest, which is a burden on the exchequer -A copy of the Order was asked to be sent to the Office of Honourable Prime minster, The Hon'ble Finance Minister GOI, The Hon'ble Law Minister, the Central Board of Direct Taxes and to the Attorney General for India for information and necessary action. [S. 244A, Art. 226]**

The petitioner filed the writ petition due to the failure to issue a refund with interest. Department contended that the interest system under the control of Centralized

Processing Center ("CPC"), Bangalore has some issues, and therefore, amount is not being released to assesses. Allowing the petition the Court held that, the standard excuse given by the Income Tax Department is that the refund cannot be processed due to technical issues at the CPC. The High Court reprimanded the Department, stating that the interest is payable in law until the date of refund, and the Department failed to realise that it is the public money used to pay interest, which is a burden on the exchequer. A copy of the Order was asked to be sent to the Office of the Honourable Prime minster, The Hon'ble Finance Minister GOI, The Hon'ble Law Minister, the Central Board of Direct Taxes and to the Attorney General for India for information and necessary action. The Court also directed the respondents either by itself or through CPC shall ensure that the amount is credited to Petitioner's account on or before 4th November 2023 with interest up to the date of payment in accordance with law. (AY. 2020-21)
Matrix Publicities and Media India (P.) Ltd. (2024) 296 Taxman 85 (Bom.) (HC)

S. 237: Refunds -Failure to issue refunds -Alleged due to system issue -Negligence of the officers -Court directed the Officer to credit the amount of the refund to the account of the petitioner not later than 10. 30a. m on 30th April 2024, along with accumulated interest under section 244A of the Act, up to 29th April, 2024. [S. 244A, Art. 226] 2473

The petitioner is entitled for refunds for the AY. 2006-07 Rs. 2,16,950, for the AY. 2008-09 Rs 2,55,340 and for the AY. 2009-10 Rs. 3,04,865, totalling to Rs 7,77,165. The petitioner has written several letters and constantly kept following up with the CPC. The petitioner filed the writ before the Honourable High Court. In the affidavit the Revenue stated that the refund remained to be issued "due to system issue ". The Court directed the Officer to credit the amount of the refund to the account of the petitioner not later than 10.30a. m on 30th April 2024, along with accumulated interest under section 244A of the Act, up to 29th April, 2024. The Court also observed that the Revenue has not clarified what was the system issue, nobody knows and it only reflects clear negligence of the officer including the person who has filed the affidavit. (WP No. (L) 7726 of 2024 dt. 23-4-2024)
Grace Associates v. UOI (Bom)(HC) www.itatonline.org

S. 239: Refunds -Limitation -Central Board of Direct Taxes -Refund -Rejection of application on condonation of delay -Order of Commissioner is affirmed. [S. 119(2)(b), Art. 226] 2474

Assessee filed an application under section 119(2)(b) before Commissioner for condonation of delay in filing application for refund. Commissioner considered claim for refund on merit and rejected claim without touching on merit of application for condonation of delay. On writ the Court held that in view of Circular No. 9/2015, dated 9-6-2015 income-tax authority which was empowered to condone delay in filing application for refund was to ensure himself that claim of assessee was genuine and bona fide, Commissioner was legally correct in rejecting claim for refund without touching on merit of application for condonation of delay. (AY. 2012-13)
Daisy v. PCIT (2023)154 taxmann.com 431 / (2024) 336 CTR 340 (Ker.) (HC)

2475 **S. 240: Refunds -Appeal –Order of Tribunal -Refund denied -Revenue is bound to refund amount to the Assessee with interest as per the provisions of Section 240 and there is no onus on the part of the Assessee to complete any formality for the amount of refund due -Non-functionality of TRACES Portal is not a ground for denying benefit arising out of statutory provision under the Act. [S. 201(1), (201(IA), 254(1), Form No 26B, Art. 226]**

The orders u/s 201(1) / (1A) were passed by the AO determining the tax liability with interest for the alleged default of non-deduction of tax at source for the payments made on various remittances for purchase, installation and supervision charges. Aggrieved by the order of the CIT (Appeals) upholding the AO's order, the Assessee filed the appeal before the ITAT, which had been decided in favour of the Assessee. However, during the pendency of the appeal, on insistence of the department, the Assessee had deposited the outstanding tax amount with interest under the protest. The AO passed the orders giving effect to the ITAT's order u/s 254 for a refund of certain amount, but not paid to the Assessee on the ground that the Assessee had not filed its application on TRACES portal in prescribed form 26B. On Writ, the Hon'ble Court observed that Section 240 dealt with refund of any amount that becomes due to Assessee as a result of any order passed in appeal or other proceedings and mandates that the AO shall refund the amount to the Assessee without having make on claim on that behalf in the event of refund becomes due as a result an order was passed in appeal. The Hon'ble Court further observed that the non-functionality of the TRACES portal shall not be ground for denying the benefit arising out of the statutory provisions under the Act. The Writ Petition has been disposed of with a direction to the department to complete the exercise within thirty days and accordingly, disposed of. (AY. 2010-11, 2011-12)

Birla Corporation Ltd. v. PCIT (2024) 301 Taxman 357 (MP)(HC)

2476 **S. 241A: Refunds -Withholding of refund in certain cases -In anticipation demand without even recording reasons -Refund cannot be denied. [S. 244A, Art. 226]**

Assessing Officer had informed about computed refund. Principal Commissioner approved withholding of refund recording that reference to TPO was pending and there was every likelihood of raising a demand. On writ, allowing the petition the Court held that if a reference to TPO was under investigation and if adjudication, after due process, results in a demand, assessee will have to answer demand, but in anticipation of a conclusion for a demand without even recording reasons, assessee could not be denied refund. Accordingly, the Assessing Officer is directed to refund amount along with interest within time specified. (AY. 2021-22)

Myntra Designs (P.) Ltd v. NFAC (2024)158 taxmann.com 38 / 336 CTR 614 (Karn.)(HC)

2477 **S. 243: Refunds -Interest on delayed refunds -Failure to grant interest -Strictures -Interest being paid in view of delay by department and officers did not realize that it was a public money that was used to pay interest and an effort should be made to save this public money -Failure to pay same would be viewed as a wilful disobedience of orders and may lead to contempt proceedings. [Art. 226]**

Assessee received a refund of certain sum including interest from 1st April, 2020 to 22nd October, 2021. Assessee stated that payment was received only on 8th June, 2022

and, therefore, interest was payable up to and including 8th June 2022. On writ, the Department stated it needed two months to make said payment. Court held this was a most audacious request the department could have made because this interest also was being paid in view of delay by department and officers did not realize that it was public money that was used to pay interest and an effort should be made to save this public money. Court directed that interest would be calculated up to 1st March, 2024 and department was directed to pay balance interest on or before 1st March, 2024 and failure to pay same would be viewed as a wilful disobedience of orders of Court and may lead to contempt proceedings.
Laqshya Media Ltd. v. Dy. CIT (2024) 298 Taxman 774 (Bom.) (HC)

S. 244: Refunds -Interest on refunds -Not entitle to interest at the rate of 18 per cent -Salary paid in arrears or in advance -Refundable amount -Relief under section 89 is to be considered at time of calculating payable amount of tax there is no provision in Act to refund amount of relief granted under section 89 as it is [S. 89(1), 237, Art. 226] 2478
Assessee was an employee of a bank. Assessing Officer allowed relief under section 89 of Rs. 2,81,797 to assessee. He further granted refund of Rs. 2,05,030 to assessee. Assessee submitted before High Court that principal refundable amount should be equal to amount of relief, i. e., Rs. 2,81,797 instead of Rs. 2,05,030 calculated by Assessing Officer. Court held that, since refundable amount of Rs. 2,05,030 was calculated by Assessing Officer after considering relief of Rs. 2,81,797 as claimed by assessee under section 89 and Chartered Accountant attached to High Court also verified refund of Rs. 2,05,030, there was no mistake on part of Assessing Officer in calculation of refundable amount to tune of Rs. 2,05,030. High Court directed Assessing Officer to refund due amount to assessee with allowable interest. Assessing Officer granted refund to assessee along with interest calculated at rate of 0.5 per cent per month. Assessee submitted before High Court that High Court earlier directed Assessing Officer to pay amount of refund along with interest, therefore, principal amount could not be treated as refund and it was judgment debt and, therefore, he was entitled for simple interest at rate of 18 per cent per annum. Since Chartered Accountant attached to High Court also mentioned in his report that interest was payable at rate of 0.5 per cent per month and assessee had not suggested any provision under which he was entitled to interest at rate of 18 per cent per annum and it was also not pointed by assessee that if amount of refund be considered as judgment debt then under which provision same will fetch interest at rate of 18 per cent per annum, there was no error in calculation of interest. (AY. 2009-10)
Gurmit Singh Vilkhu v. PCIT (2024) 298 Taxman 247/466 ITR 56/ 339 CTR 79 (MP)(HC)

S. 244A: Refunds -Interest on refunds -Non-Functionality of Department's Portal -Amalgamation -Delay was not attributable to assessee -Entitled to additional interest -Interpretation of Taxing Statutes -Application of principles of equity. [S. 153(5), 244A (1), 250, Art. 226] 2479
Allowing the petition the Court held that the denial of additional interest was based on the following reasons, namely, amalgamation of the assessee, non-availability of the functionality of the Department's portal and the prevailing covid-19 situation. The primary rationale behind denying refund to the assessee by the Revenue was non-

functionality of the portal due to the amalgamation of the assessee. It was the case of the Revenue that due to the amalgamation of the assessee, the appeal effect order could not be passed on the old permanent account number of the assessee since it was non-existent. It was also the case of the Revenue that in case, the appeal effect was given on the new permanent account number, there was no functionality on the Departmental portal to migrate the tax credit from the old permanent account number to the new permanent account number of the assessee. The responsibility imposed upon the assessee to intimate the Revenue the scheme of amalgamation, stood fulfilled. The amalgamation was permissible and had duly been carried out. It could not, at a later stage, be treated to be detrimental to the interest of the assessee and that too, for denying statutory benefits. Furthermore, the non-functionality of the Departmental portal due to the deletion of the old permanent account number of the assessee, pursuant to the amalgamation of the assessee, in all possibility, could never come under the umbrella of section 244A(2) of the Act, i. e., delay attributable to the assessee. The non-functionality of the portal was an administrative difficulty on the part of the Revenue. The technical glitch of the portal maintained by the Revenue which had not incorporated appropriate provisions for the transfer of tax credit in lieu of the amalgamation of the assessee was a contingency which the Revenue ought to have resolved. Thus, the non-functionality of the portal could not have been attributed to the assessee and statutory interest could not be denied by taking resort to section 244A(2) of the Act.

Court also held that concomitants of the principles of equity can be resorted to when the remedy prescribed under the law is impermissible or unjustified. It is a trite position of law that principle of equity is not the panacea to cure any defect rather it can only supplement the law and not supplant it. It was not the case of the Revenue that the covid-19 pandemic was attributable to the assessee. The Revenue may have had some difficulties in dealing with such instances, but that would not absolve the Revenue from the rigour of section 244A(1A) of the Act. Notably, since the Revenue had already granted the interest under section 244A(1) of the Act without attributing any delay to the assessee, there was no cogent reason for not granting additional interest as mandatorily prescribed under section 244A(1A) of the Act. In fact, the reasons of delay attributed to the assessee were without any logical explanation and lacked merit. Revenue is directed to grant the statutorily prescribed interest as mandated under section 244A(1A) of the Act to the assessee, with due expediency. (AY. 2010-11)

Genpact India Pvt. Ltd v. Dy. CIT (2024) 468 ITR 378 / 160 taxmann.com 268 (Delhi)(HC)

2480 **S. 244A: Refunds -Interest on refunds -Instructions of Central Board Of Direct Taxes -Failure to refund amounts payable under Form 5 issued Under Direct Tax Vivad Se Vishwas Act, 2020 Read With Direct Tax Vivad Se Vishwas Rules, 2020 -Assessee entitled to interest on refund for period from date of issue of Form 5 till date of payment. [S. 237, Direct Tax Vivad Se Vishwas Act, 2020, Direct Tax Vivad Se Vishwas Rules, 2020, Art. 226]**

Held, allowing the petition, that since form 5 under the Direct Tax Vivad se Vishwas Act, 2020 read with the Direct Tax Vivad se Vishwas Rules, 2020 had been issued on June 15, 2021, the jurisdictional Assessing Officer was duty bound to have passed

consequential orders and issued refunds latest by July 31, 2021. The assessee was entitled to refund which ought to have been processed and paid latest by July 31, 2021. Since the amount had been paid only on May 26, 2023, the assessee was entitled to interest on the refund amount for the period from August 1, 2021 till May 26, 2023 at the rate of 6 per cent. per year which was the rate prescribed under section 244A.
UPS Freight Services India Pvt. Ltd. v. Dy. CIT [2023] 156 taxmann.com 489 / (2024)466 ITR 51/ 336 CTR 261 (Bom)(HC)

S. 244A: Refunds -Interest on refunds -The Direct Tax Vivad Se Vishwas (DTVSV) Act, 2020-Delayed payment -Entitle to interest on refund amount of delay beyond period of 90 days from date of refund. [The Direct Tax Vivad Se Vishwas (DTVSV) Act, 2020, S. 7, Form Nos, 3, 4, 5] 2481

Assessee filed an application for dispute relating to assessment year 2013-14 and after making necessary compliance got Form No. 3 of DTVSV Act indicating a refund of certain amount. On filing Form No. 4, assessee received Form No. 5 from revenue under DTVSV Act indicating that full and final settlement had been done in accordance with Form No. 3. Pursuant to Form Nos. 3 and 5 as issued by revenue under DTVSV Act, assessee made several representations for issuing refund of certain amount. After making several requests, assessee received/got adjustment against demands for certain amount, however, no interest was paid for delayed payment. On writ the Court held that perusal of Form No. 5 clearly revealed that order had been passed by designated authority under DTVSV Act and Rules determining amount refundable to assessee in accordance with provisions of Act. Therefore, once order in Form No. 5 had been issued, assessee became entitled for amount of refund and since said amount was refunded to assessee/ adjustment towards demands after more than 90 days from date of determination of refund amount, assessee would be entitled to interest on refund amount for delay beyond period of 90 days from date of refund. (AY. 2013-14)
Dwejesh Acharya v. ITO (2023)157 taxmann.com 332 / (2024) 336 CTR 266 (Raj.) (HC)

S. 244A: Refunds -Interest on refunds -Payment of excess amount of equalisation levy -Entitle to interest on equalisation levy up to payment of refund. [Finance Act, 2016, S. 166, 168, Art. 226] 2482

Assessee filed its statement of specified income disclosing total consideration for specified services and equalisation levy thereon. After declaring total levy paid, refund was claimed. Refund was paid after petition was filed, however, no interest was paid on amount refunded. On writ the Court held that since assessee had paid amount in excess of what was due and liable to be paid, it should equally be compensated with interest. Therefore, assessee would be entitled to interest on amount refunded from 1-4-2018 (end of financial year in which excess tax was paid by assessee) up to date of payment of refund to assessee. (AY. 2018-19)
Group M Media India (P.) Ltd. v. Dy. CIT (2023)157 taxmann.com 487 / (2024) 336 CTR 270 (Bom.) (HC)

2483 **S. 244A: Refunds -Interest on refunds -Amounts paid as advance tax and tax deducted at source must be included -Interpretation of taxing statutes -Words must be given their natural meaning. [S. 143(1), 244A(1)(a)]**

Held that in computing the interest payable to the assessee on refund under section 244A the Assessing Officer had to grant interest on the amounts paid pursuant to the demands raised, and the advance tax, tax deducted at source and self-assessment tax. It is a cardinal principle of interpretation that the words in a statute must be given their natural and ordinary meaning(AY. 1989-90)

CEAT Ltd. v CIT (2024) 465 ITR 276 /159 taxmann.com 535 / 340 CTR 169 (Bom)(HC)

2484 **S. 244A: Refunds -Interest on refunds -Delay in application under circumstances beyond control of assessee -Delay is condoned -Entitled to interest on refund -Money held without authority -Directed to grant interest under section 244A. [S. 194LA, Form No. 16A, 26AS, R. 31(3), Art. 226]**

In the return of income filed by the assessee, interest on the delayed refund of tax deducted at source from interest was also claimed. However, no interest on delayed refund was granted by the petitioner. On a writ petition the Court held that the assessees were not at fault for not filing the return of income to claim the refund as the deductor, i. e., the Executive Engineer, Irrigation Department neither informed the assessee about the deduction of tax nor was form 16A which is mandatory, issued. On the contrary, when the assessees made representations by informing the Executive Engineer, Irrigation Department about the wrong mentioning of the provision for deduction of tax in form 26AS issued as per return of tax deducted at source to be filed by the deductor, no reply was given. It was clear that the assessees were not at fault for the delay caused in filing the return of income claiming the refund of the tax deducted at source as no tax was payable by the assessee on the amount of interest under section 194LA of the Act. Even as per sub-section (2) of section 244A of the Act, as it existed during the relevant assessment year 2013-14, when the proceedings resulting in the refund were not delayed for reasons attributable to the assessee whether wholly or in part, the period of the delay so attributable only can be excluded from the period for which interest is payable under sub-section (1) or (1A) or (1B) to section 244A of the Act. In the facts of the case, the words "or the deductor, as the case may be," which were inserted with effect from April 1, 2017 would not be applicable as the assessees had been permitted to file the refund claim for the assessment year 2013-14 after condonation of delay and such delay in claiming the refund could not be said to be attributable to the assessees as the assessees were not made aware about the deduction of tax at source by the deductor in the absence of issuance of form 16A which was mandatorily required as per rule 31(3) of the 1962 Rules. (AY. 2013-14)

Mohanbhai Madhavjibhai Bharad v. PCIT (2024)465 ITR 313/ 336 CTR 578 /158 taxmann.com 13 (Guj.)(HC)

S. 244A: Refunds -Interest on refunds -Section 7 of Direct Tax Vivad Se Vishwas Act, 2020 (DTVSV Act, 2020) is a complete code by itself and if case is to be settled under it, no interest under section 244A is available. [S. 154, 245, DTVSV Act, 2020, S. 3, 4(1), 7, Art. 226] 2485

Petitioner opted to settle disputes under DTVSV Act, 2020 by filing declarations in Form-1 on 31-1-2021 for ten assessment years starting from assessment year 1999-2000 up to assessment year 2008-09 before Designated Authority in terms of section 4(1). For period in dispute i. e., assessment year 1999-2000 to assessment year 2002-03, Deputy Commissioner, International Taxation had issued orders dated 29-1-2021 under section 154 and ordered refund of amounts after adjusting tax liability from refunds due for assessment years 2004-05 & 2005-06 under section 245. Petitioner had adjusted refundable amounts from assessment year 2004-05 and assessment year 2005-06 towards amounts payable by petitioner for assessment years 1999-2000 to 2002-03 years in Form-1-Designated Authority accepted adjustment and ordered refund of amounts to petitioner but declined to interest under section 244A on delayed payments/adjustments of refund. On writ the Court held that section 7 of DTVSV Act, 2020 is a complete code by itself and if case is to be settled under it, no interest under section 244-A is available. Accordingly, the amounts adjusted and appropriated towards tax liability for assessment years 1999-2000 and 2000-01 under provisions of DTVSV Act from and out of refunds due for assessment years 2004-05 and 2005-06 were to be treated as amount paid by petitioner for assessment year 1999-2000 and assessment year 2000-01 under DTVSV Act, 2020 and consequently, department was to be directed to process excess amount quantified as refundable in section 154 orders dated 29-1-2021 for those assessment years together with interest under section 244-A for assessment years 2004-05 and 2005-06, subject to limitation that no declaration was filed for assessment year 2004-05 and assessment year 2005-06. Amount of tax that had been ordered to be refunded for rest of two assessment years i. e., assessment year 2001-02 and assessment year 2002-03, was concerned; excess amounts were refundable because of section 7 of DTVSV Act but petitioner was not entitled to interest under section 244-A for these two assessment years in view of Explanation to section 7 of DTVSV Act. (AY. 1999-2000 to 2002-03)

Ansaldo Energia SPA v. Dy. CIT (IT) (2024) 299 Taxman 411 /466 ITR 287 (Mad.) (HC)

S. 244A: Refunds -Interest on refunds –Lease rent on the basis of actual production days -Deducted TDS on higher on the basis of anticipating tax liability -Excess TDS paid is directed to be refund with interest. [S. 195, Art. 226, 265] 2486

Assessee-company is engaged in manufacturing and trading of moulded plastic items. During year, assessee had imported moulds from Dart USA under Rental Agreement and had made certain payments. As per agreement, mould lease rent was agreed to be paid by assessee on basis of actual production days. Later on, due to change in method for charging rent on mould lease, certain deliberations were made between assessee and Dart USA to increase said rent. However, before negotiations could be finalized, assessee made a provision for higher rental in its books of account and pursuant to revised estimate, assessee made a deduction of TDS on higher side and deposited same. Subsequently, increase in mould lease rent did not happen which resulted in excess deposit of TDS amounting. Accordingly, assessee made an application before

Commissioner for a refund of higher tax deducted which was denied. On writ, the Court held that since no income had accrued to Dart USA qua excess TDS paid by assessee and consequently, no right of retention of excess TDS paid by assessee vests in Commissioner. Even otherwise, Commissioner was not entitled to withhold excess TDS deposited by assessee in lieu of anticipated liability for concerned assessment year as same would amount to collection of tax without any authority of law and, therefore, was to be directed to issue a refund of excess TDS with interest. CBDT circular dated 23-10-2017 and CBDT circular dated 26-4-2016. (AY. 2012-13)
Tupperware India (P.) Ltd v. CIT (IT) (2024) 298 Taxman 25 / 465 ITR 777 (Delhi) (HC)

2487 **S. 244A: Refunds -Interest on refunds -Central Processing Centre (CPC) -Unable to input it foreign bank account details by imputing SWIFT code and IBAN as per ITR -Bank account is validated by revenue on 7-7-2023 and refund was made in October 2023 without interest -High Court directed the Revenue to pay interest on refund amount at rate specified in section 244A from 1-5-2022 to 5-10-2023. [S. 143(1), Art. 226]**
Assessee, a Limited Liability Company (LLC) incorporated in USA, sold equity shares in India to a buyer in USA who deducted income tax at 20 per cent of sale consideration. Assessee filed its return of income declaring a total income and claimed refund. Upon examining return, an intimation was issued under section 143(1) informing assessee that it was entitled to a certain refund. However, as refund was not made, assessee raised grievances with Central Processing Centre (CPC) that it was unable to input its foreign bank account details by imputing SWIFT code and IBAN as per ITR. After being informed orally that refund claim could not be processed unless a bank account was set up in India, assessee set up a bank account in India and said bank account was validated by revenue on 7-7-2023 and refund was made in October 2023 without interest. On writ, the Court held that when assessee requested department to enable assessee to provide SWIFT Code and IBAN, delay in processing of return could not be attributed to assessee and thus, revenue was to be directed to pay interest on refund amount at rate specified in section 244A from 1-5-2022 to 5-10-2023. (AY. 2021-22)
Coda Global LLC v. Dy. CIT (IT) (2024) 297 Taxman 299/339 CTR 314 /466 ITR 687 (Mad.) (HC)

2488 **S. 244A: Refunds -Interest on refunds -NFAC is directed to take cognizance of the proposition that interest under s. 244A has to be granted upto the date when the actual refund was received while deciding the matter. [S. 143(1), 234D]**
The Tribunal remitted the matter to NFAC for de novo adjudication considering the documents on record and the judgment of the jurisdictional High Court in *Group M. Media India (P) Ltd. v. Dy. CIT (International Taxation) (2024) 336 CTR 270 (Bom)(HC)* and pass a speaking order as per law complying with the principles of natural justice. NFAC is directed to take cognizance of the proposition that interest under s. 244A has to be granted up to the date when the actual refund was received while deciding the matter. (AY. 2018-19)
Lata Mangeshkar Medical Foundation v. DCIT (E) (2024) 229 TTJ 716 / 237 DTR 260 / 38 NYPTTJ 393 / 166 taxmann.com 427 (Pune) (Trib)

S. 244A: Refunds -Interest on refunds -Interest to be granted till date of grant or credit of refund. 2489

Allowing the appeal the Tribunal directed the Assessing Officer to first adjust the refund granted against the interest component and then adjust the balance amount against the principal /tax component and any short fall thereafter shall be considered for computation of interest payable to the assessee under section 244A till the date of grant or crediting of refund. (AY. 2020-21)

Deposit Insurance and Credit Guarantee Corporation v. Dy. CIT (2024) 116 ITR 34 (SN) (Mum.) (Trib)

S. 244A: Refunds -Interest on refunds -Shown any other income under the head business income -Assessable under the head income from other sources -Rate of tax unchanged -Addition of interest income is deleted. [S. 28(i), 56] 2490

Held that when interest is paid on the Income -tax refund amount, it is required to be reported under the head Income from other sources. But, the assessee had treated it as business income. There is no loss to the exchequer, when the assessee had paid tax on such income at the same rate, even though under a different heading. Addition is deleted. AY. 2017-18)

Singhal Builders v. ACIT (2024)115 ITR 378 / 169 taxmann.com 415 (Jaipur)(Trib)

S. 244A: Refunds -Interest on refunds –Since the refund was due to the assessee pursuant to rectification carried out u/s. 154 and arising out of the tax deducted at source up to 31.03.2017 the interest was to be paid to the assessee for period from 1. 4. 2017 to the date of granting refund. [S. 154] 2491

The assessee originally filed the return on 29.11.2017 claiming TDS credit of Rs. 81,86,10,024/-. It was finally revised in the revised return on 30.03.2019 claiming TDS on Rs. 75,14,12,726/- and refund of Rs. 2,89,36,036/-. Thereafter, the assessee's case was scrutinized by issuing of notice u/s. 143(2). Assessment order was passed on 29. 05. 2021 and refund was granted of Rs. 3,31,49,723/-. No interest u/s. 244A of the Act was given because the TDS was less than 10% of the total tax liability. Thereafter, on 06.06.2022, assessee moved a rectification application and one of the points of its application was that the assessee is entitled to substantial MAT credit brought forward from earlier years. The claim of the assessee was accepted and refund was granted with interest thereon for a period of five months. The assessee filed appeal before CIT(A) claiming interest from 1.4.2017. However, the CIT(A) rejected the contentions and upheld order passed by the AO. On further appeal, the Tribunal after analysing provisions section 244A of the Act held that for the purpose of calculating interest, assessee's return shall always be treated to be filed u/s. 139(1) of the Act accordingly the interest u/s. 244A of the Act in the case of the assessee for AY 2017/18 needs to be computed from 01. 04. 2017 to the date of grant of refund. (AY. 2017-18)

SREI Infrastructure Finance Ltd. v. ACIT (2024) 112 ITR 165 / 163 taxmann.com 1129 (Kol.) (Trib.)

2492 **S. 244A: Refunds -Interest on refunds -Dividend Distribution Tax -Interest under section 244A is to be granted on refund of Dividend Distribution Tax (DDT). [S. 154, 156]**

Assessee claimed refund of dividend distribution tax (DDT). Assessing Officer issued order granting refund of DDT, however did not grant interest under section 244(A). Assessee filed rectification application. Assessing Officer passed order under section 154 and denied interest claimed by assessee on ground that intention of legislature was to grant refund of excess payment made for regular payment or penalty, where notice was issued under section 156 however, in assessee's case no such demand notice was served under section 156. CIT(A) has up held the order of the AO. On appeal the Tribunal held that in case similar to assessee, Supreme Court held that interest payment was a statutory obligation and non-discretionary in nature to assessee and section 244A grants substantive right of interest and was not procedural. Interest under section 244A is granted on refund of Dividend Distribution Tax (DDT). (AY. 2014-15)

Piem Hotels Ltd. v. ACIT (2024) 207 ITD 736 (Mum.) (Trib.)

2493 **S. 244A: Refunds -Interest on refunds -Adjustment of refund -Interest has to be calculated by first adjusting amount of refund already granted towards interest component and balance left, if any, shall be adjusted towards tax component -Provisions of section 244A(1A) would be applicable from 1-6-2016 till date of actual receipt of refund. [S. 244A(IA)]**

Assessee filed its return claiming refund of certain amount. Refund was granted and certain interest was also granted to assessee. Subsequently, a co-ordinate Bench of Tribunal passed an order giving relief to assessee. Assessing Officer passed an order giving effect to said Tribunal's order and granted certain refund to assessee. However, Assessing Officer did not grant interest on refund. CIT(A) affirmed the order of the Assessing Officer. On appeal the Tribunal held that the Assessing Officer had reduced interest only to extent it was determined at point of issuance of earlier refunds, thus, leading to larger adjustment of refund towards tax component as against interest component. Therefore, manner in which Assessing Officer had adjusted refund was not correct and assessee would be entitled for interest on unpaid refunds. Assessing Officer is directed to compute correct amount of interest allowable to assessee by first adjusting amount of refund already granted towards interest component and balance left, if any, towards tax component. Held that provision of sub-section (1A) to section 244A is inserted by Finance Act, 2016 as a remedial measure to compensate assessee in cases where there are delays in granting refunds due on account of delay in passing order giving effect to appellate or revisional orders. Therefore, provisions of section 244A(1A) would be applicable from 1-6-2016 till date of actual receipt of refund. (AY. 1993-94)

Tata Sons (P.) Ltd. v. DCIT (2024) 204 ITD 802 (Mum.) (Trib.)

2494 **S. 245C: Settlement Commission -Settlement of cases –Pending cases -Constitution validity of an amendment to Section 245A discontinuing operation Settlement Commission w. e. f. 01–02–2021 also challenged the validity of Circular / Order F. No. 299/22/2021-DIR(INV. III) dtd. 28-09-2021-Last date mentioned in circular should read as 31-3-2021 -Orders rejecting applications on ground that no case pending as**

on 31-1-20021 set aside -Applications to be deemed pending for consideration by Interim Board -Abolition of Settlement Commission -Jurisdiction of court -Right to seek resolution through Settlement Commission conferred by statute -Within policy realm of State to take away remedy or benevolence given -Court cannot substitute its opinion to abolition of Settlement Commission-SLP of Revenue is dismissed. [S. 245A, 245D, 245M, Art. 136]

On Writ, High Court held that the ITSC was in existence legally and factually until 31–03–2021 and every eligible assessee had the right to approach ITSC for pending cases with ITSC. The Court further observed that the purpose of retrospective legislation was to make ITSC inoperative right from the date of introduction of the Bill and to send all pending applications to Interim Board and neither there was an intent nor it was within the purpose to do away with pending applications in respect of matters in which cases arose from 01–02–2021 to 31–03–2021. The Court held that the last date mentioned for filing applications in Section 245C (5) should be read as 31-03-2021 instead of 01-02-2021 and consequently, the last date mentioned in Circular dtd. 28-09-2021 should also be read as 31-03-2021. Court also held that abolition of Settlement Commission Court cannot substitute its opinion to abolition of Settlement Commission. Right to seek resolution through Settlement Commission conferred by statute, within policy realm of State to take away remedy or benevolence given-Court cannot substitute its opinion to abolition of Settlement Commission. SLP of Revenue is dismissed.

UOI v. Velammal Chennai Educational Trust (2024)467 ITR 169/ 167 taxmann.com 372 / 301 Taxman 319 (SC)

Editorial: Jain Metal Rolling Mills v. UOI (2023) 156 taxmann.com 513 / (2024) 461 ITR 423 (Mad.) (HC)

S. 245C: Settlement Commission -Settlement of cases -Conditions -Application was filed on 30-3-2021 -CBDT's press release giving taxpayers an opportunity to file application for settlement by 30-9-2021 -Eligible application though filed after 31-1-2021 -Pending application which is required to be considered as pending application for adjudication on merits. [S. 153A, 245B, 245D, 245D, 245F, Art. 226] 2495

During the pendency of assessment proceedings, assessee filed application before Settlement Commission under section 245C on 30-3-2021. Assessing Officer, however, completed assessment proceedings and passed assessment orders on 27-7-2021 on ground that applications were filed before Settlement Commissioner after cessation of settlement commission. CBDT came out with a press release dated 7-9-2021, directing to admit all applications filed after 31-1-2021 and before 30-9-2021. On writ the Court held that application filed by assessee under section 245C would be an eligible application though filed after 31-1-2021 and same was required to be considered as pending application for adjudication on merits. As per provision of section 245F(2), Interim Board was vested with powers of Settlement Commission and jurisdiction and Income-tax authority could not have proceeded further with assessment proceedings in view of pendency of settlement application before Interim Board. Therefore, the assessment order were non est and liable to be quashed and set aside as same could not have been passed as per provision of section 245F(2) of the Act. (AY. 2013-14 to 2018-19)

Sanjay Sevantilal Shah v. Interim Board for Settlement (IBS) (2024) 471 ITR 311 /160 taxmann.com 255 (Guj.) (HC)

2496 **S. 245C: Settlement Commission -Settlement of cases -Payment of taxes and interest -Evidence of payment -Rejection of application is not valid. [Art. 226]**

Allowing the petition the Court held, that from a mere perusal of the order of the Interim Board for Settlement as well as the application made by the assessee for the third occasion, dated March 10, 2021, it could be seen that the assessee had clearly furnished the details with regard to the discharge of the entire tax liability with interest. However, the application was rejected, without stating why the application was rejected and further, in the order, there was no reference made with regard to the payment details made by the assessee towards tax and interest. The Interim Board for Settlement had mechanically rejected the application for settlement filed by the assessee. The order of rejection is not valid. (AY. 2012-13 to 2018-19)

Binny Ltd. v. Interim Board for Settlement (2024)469 ITR 597 / 158 taxmann.com 508 (Mad)(HC)

2497 **S. 245C: Settlement Commission -Settlement of cases -Conditions -Case pending -Settlement Commission inoperative with effect from 1-2-2021- Establishment of Interim Board -Notification restricting filing of application before interim Board for settlement by assessees eligible on 31-1-2021 -Settlement Commission legally existed till 31-3-2021 -Last date mentioned in Notification should read as 31-3-2021 -Orders rejecting applications quashed -Matters remanded to interim Board for consideration -Amendment in law -Legislative intent. [S. 245A(b), Art. 226]**

On writ allowing the petitions the Court held that the eligibility condition in the circular issued under section 119(2)(b) should be read as March 31, 2021 and not as January 31, 2021 since the Finance Act, 2021 ([2021] 432 ITR (St.) 52) was notified with effect from April 1, 2021 and therefore the eligibility of the assessee to file the application for the settlement had to be considered from immediately preceding date. The order passed by the Interim Board for Settlement holding the applications filed by the assessee was invalid and, was not sustainable in view of the decisions of the Madras and Bombay High Courts and reading down the eligibility conditions would be applicable PAN India. That the applications filed by the assessees between February 1, 2021 and March 31, 2021 shall be deemed to be the pending applications and should be applications for the purpose of consideration by the Interim Board for Settlement considering the last date of eligibility mentioned in para 4(i) of the circular dated September 28, 2021 ([2021] 438 ITR (St.) 5) should be read as March 31, 2021 by reading down the last date February 1, 2021 as March 31, 2021 in section 245C(5) as amended by the Finance Act, 2021 ([2021] 432 ITR (St.) 52). The orders of the Interim Board for Settlement were therefore, set aside and the applications filed by the assessees should be deemed to be pending applications for consideration by the Interim Board, if otherwise, in order and eligible and should be dealt with in accordance with law on the merits and in accordance with the scheme that would be framed by the Central Government as in respect of the other cases which were pending as on January 31, 2021. Consequential actions to the orders passed by the Interim Board if any taken by the Assessing Officer were quashed and set aside. The matter was remanded back to the Interim Board for Settlement for deciding the applications filed by the assessees on the merits. (AY. 2010-11, 2013-14, 2016-17, 2017-18, 2019-20, 2020-21)

Vetrivel Infrastructure v. Dy. CIT (2024)468 ITR 665 / 164 taxmann.com 123 (Guj.) (HC)

S. 245C: Settlement Commission -Settlement of cases -Conditions -Additional conditions imposed by Central Board Of Direct Taxes through circular is not valid-Circulars cannot override provisions of Act. [S. 119, 245D, Art. 226] 2498

The assessee filed an application for settlement of case under section 245C for the assessment years 2015-16 to 2020-21. During the period from August 2022 to September 2023, settlement proceedings were conducted by the Interim Board for Settlement constituted by the Central Government pursuant to the notification dated August 10, 2021 ([2021] 436 ITR (St.) 48). The assessee from time to time pursued the proceedings before the Interim Board for Settlement. On September 22, 2021, the assessee refiled the settlement application pursuant to the press release on September 7, 2021, and paid additional interest for the period of March 2021 to September 2021. The application was rejected. On a writ petition allowing the petition, that the order passed by the Interim Board for Settlement rejecting the assessee's application under section 245C for settlement of case on the ground that the conditions as incorporated in paragraph 4 of the Central Board of Direct Taxes notification dated September 28, 2021 ([2021] 438 ITR (St.) 5) issued under section 119(2)(b) were applicable since it was contrary to the decision of this court which had struck down paragraph 4 as being ultra vires of the parent Act, was illegal and unsustainable. *(Sar Senapati Ghorpade Sugar Factory Ltd v ACIT (2024) 470 ITR 723 (Bom.) (HC)*. The assessee was eligible to file its settlement application to be considered by the Interim Board for Settlement for appropriate orders to be passed in accordance with law. (AY. 2015-16 to 2020-21)

Vishwakarma Developers v. CBDT (2024)468 ITR 686 / 165 taxmann.com 391 (Bom.) (HC)

S. 245C: Settlement Commission -Fixing the last date for filing of application -When the Department has extended the last date from 1st Feb., 2021 to 30th Sept., 2021, it can only extend the deadline but cannot introduce a new concept of eligibility as on 1st Feb., 2021 which is not there in the Act itself -Condition imposed by the Notification dt. 28th September, 2021 of CBDT is invalid and bad in law -Petitioner has the right to approach the Settlement Commission. [S. 119(2)(b), 245C (5), Art. 226] 2499

Allowing the petition the Court held that Madras High Court in *Jain Metal Rolling Mills v UOI (2023) 335 CTR 761 / 232 DTR 331 (Mad.) (HC)* has held that the eligibility condition in the impugned notification dt. 28th Sept., 2021 issued under S 119(2)(b) should be read as 31st March, 2021 and not 31st Jan., 2021 as the Finance Act, 2021 was notified, w. e. f. 1st April, 2021, and, therefore, the eligibility of an assessee is to be considered from the immediately preceding date. In view of the decision of the Madras High Court, the impugned notice/order dt. 16th Sept., 2021, passed by respondent No. 1 holding assessee's application as invalid and bad in law is clearly not sustainable. That apart, retrospective legislation cannot affect vested rights. When the Department has extended the last date from 1st Feb., 2021 to 30th Sept., 2021, it can only extend the deadline but cannot introduce a new concept of eligibility as on 1st Feb., 2021 which is not there in the Act itself. Though the CBDT relaxed the rigours of the provisions of the Act for the benefit of assessees, it is not open to the CBDT to put in new rigours or impediments to the rights of an assessee in a press release or a notification which is contrary to the provisions of the Act-Sub-s. (5) of S. 245C, even though inserted with retrospective effect from 1st Feb., 2021, can be given effect to only after the date when

the assent of the President of India was received to promulgate the Finance Act, 2021. Assessee had already made the application on 18th March, 2021 when sub-s. (5) of s. 245C was not in the statute and hence, assessee had made the valid application as per the provisions of the Act. Purport of sub-S. (5) is not to make an application already filed after 1st Feb., 2021 as invalid but it should be read as no application shall be made after 1st Feb., 2021 once the assent of the President of India has been received. But before receipt of the assent, any application made by an assessee will not be hit by sub-s. (5) of S. 245C. That apart, if the notice under S. 153A would have been issued on or before 31st Jan., 2021, assessee would have been eligible to make an application. Therefore, when the eligibility is dependent on the action of respondent No. 1 to issue a notice and when respondent No. 1 issues a notice after inordinate delay from the search, respondent No. 1 should not be entitled to claim that assessee has lost its right to approach the Settlement Commission on account of such delayed action of respondent No. 1 itself. Followed, *New India Assurance Company Ltd. v. Asst. CIT (2024) 337 CTR 257 / 235 DTR 113/ 158 taxmann.com 367(Bom.) (HC) and Group M. Media India (P) Ltd. v. UOI (2016) 289 CTR 622/142 DTR 267 / 77 taxmann.com 106. (Bom.) (HC) Jain Metal Rolling Mills v. UOI (2023) 335 CTR 761 / 232 DTR 331(Mad.) (HC)* (AY. 2014-15 to 2020-21)

Sar Senapati Santaji Ghorpade Sugar Factory Ltd. v. ACIT (2024) 338 CTR 167 /338 CTR 167 / 470 ITR 723 (Bom.) (HC)

2500 **S. 245C: Settlement Commission -Settlement of cases –Failure to make true and full disclosure of income and its sources -Rejection of application is affirmed. [S. 132, Art. 226]**

As a result of search conducted under section 132 on himself and his group filed an application under section 245C before Interim Board for Settlement for settlement of cases. Commissioner in his report submitted to Settlement Commission stated that assessee did not have any basis for apportionment of unaccounted expenditure and unaccounted income between himself and company and also said that assessee had not made full and true disclosure in application. Settlement commission held that assessee despite opportunity having been granted to him during hearing did not explain basis for apportionment of unaccounted sales, expenditure and income between himself and company and concluded that assessee had not come before it with clean hands and had not offered full and true particulars of his income and rejected application. On writ dismissing the petition, the Court held that since Settlement Commission had taken a correct view that assessee failed to disclose true and correct facts before it in his application and did not approach it with clean hands, there was no ground to interfere with order of Settlement Commission. (AY. 2013-14 to 2019-20)

R. J. Williams v. ACIT (2024) 298 Taxman 313/ 471 ITR 257 (Ker.) (HC)

2501 **S. 245C: Settlement Commission -Settlement of cases -Conditions -Validity of amendments to Act abolishing Settlement Commission and Circular issued by CBDT stipulating final date for filing application before Settlement Commission -Dismissal of writ petition by a single judge at admission stage is held to be not proper -Respondents are directed to file affidavits for consideration of legal aspects**

-Limitation -Search cases -Notices are stayed till the disposal of appeals. [S. 132, 153A, 245D, Art. 226]

The assessee challenged the validity of amendments to Act abolishing Settlement Commission and Circular issued by CBDT stipulating final date for filing application before Settlement Commission and circular issued by CBDT stipulating final date for filing application before Settlement Commission. Single judge dismissed the petition. On appeal the division Bench held that legal issues can be considered only after the respondents file their affidavit-in-opposition. The writ petitions should not have been dismissed at the admission stage and should have been heard after calling for affidavits as pure questions of law need to be first answered before proceeding into the factual matrix. Notices are stayed till disposal of appeals. (AY. 2013-14 to 2018-19)

Pradeep Kumar Naredi v. UOI [2024] 461 ITR 418 (Cal.) (HC)

RSB Industries Ltd v. UOI [2024] 461 ITR 418 (Cal.) (HC)

Editorial: Pradeep Kumar Naredi v. UOI [2024] 461 ITR 414 (Cal.) (HC) (Single Judge), Also refer Sar Senapati Santaji Ghorpade Sugar Factory Ltd. v. ACIT [2024] 161 taxmann.com 166 (Bom.) (HC)

S. 245C: Settlement Commission -Settlement of cases –Pending cases -Constitution validity of an amendment to Section 245A discontinuing operation Settlement Commission w. e. f. 01–02–2021 also challenged the validity of Circular / Order F. No. 299/22/2021-DIR(INV. III) dtd. 28-09-2021 -Last date mentioned in circular should read as 31-3-2021 -Orders rejecting applications on ground that no case pending as on 31-1-20021 set aside -Applications to be deemed pending for consideration by Interim Board -Abolition of Settlement Commission -Jurisdiction of court -Right to seek resolution through Settlement Commission conferred by statute -Within policy realm of State to take away remedy or benevolence given -Court cannot substitute its opinion to abolition of Settlement Commission. [S. 245A, 245D, 245M, Art. 226] 2502

On Writ High Court held that the ITSC was in existence legally and factually until 31–03–2021 and every eligible assessee had the right to approach ITSC for pending cases with ITSC. The Court further observed that the purpose of retrospective legislation was to make ITSC inoperative right from the date of introduction of the Bill and to send all pending applications to Interim Board and neither there was an intent nor it was within the purpose to do away with pending applications in respect of matters in which cases arose from 01–02–2021 to 31–03–2021. The Court held that the last date mentioned for filing applications in Section 245C (5) should be read as 31-03-2021 instead of 01-02-2021 and consequently, the last date mentioned in Circular dtd. 28-09-2021 should also be read as 31-03-2021. Court also held that abolition of Settlement Commission Court cannot substitute its opinion to abolition of Settlement Commission. Right to seek resolution through Settlement Commission conferred by statute, within policy realm of State to take away remedy or benevolence given -Court cannot substitute its opinion to abolition of Settlement Commission.

Jain Metal Rolling Mills v. UOI (2024) 461 ITR 423 (Mad.) (HC)

Editorial: SLP of Revenue is dismissed, UOI v. Velammal Chennai Educational Trust (2024)467 ITR 169/ 67 taxmann.com 372 (SC)

2503 **S. 245C: Settlement Commission -Settlement of cases -Conditions –Jurisdiction -Rejection of application -Order of rejection is valid -Court can only ensure proper implementation of law by statutory authority -Not duty of court to legislate or issue any circular or notification. [S. 119(2)(b), Art. 226]**

On writ the Court held that Settlement Commission ceased to operate w. e. f. 01–02–2021 in view of the amendment made by the Finance Act, 2021. Application for settlement of case filed on 17–03–2021, which has been rejected, the order passed by the Settlement Commission was in accordance with law and was legal and valid. Circular and Notification No. : CBDT Order P. No. 299/22/2021-Dir (Inv. III), dt. 28–09–2021 (2021) 438 ITR 5 (St) and Press Release dated 07–09–2021. Court also held that Court can only ensure proper implementation of law by statutory authority. Not duty of court to legislate or issue any circular or notification. (AY. 2013-14 to 2018-19) (SJ)

Pradeep Kumar Naredi v. UOI (2022) 138 taxmann.com 378 / (2024) 461 ITR 414 (Cal.) (HC)

Editorial: Refer, Pradeep Kumar Naredi v. UOI (2024) 461 ITR 418 (Cal) (HC) RSB Industries Ltd v. UOI (2024) 461 ITR 418 (Cal)(HC)

2504 **S. 245D: Settlement Commission -Settlement of cases -Full and true disclosure -Power -Grant immunity from prosecution and penalty -Application rejected due to lack of true and full disclosure -SLP of assessee is dismissed [S. 245C, 245H, Art. 136]**

The Assessee/Applicant filed an application before the Settlement Commission, disclosing certain additions not reported in the return of income. The Settlement Commission made an addition towards share capital, noting that it was derived from individuals who either did not exist or were identified as accommodation entry operators. The assessee failed to provide substantial evidence to substantiate the authenticity of the share capital. Further, the assessee did not disclose the additional income towards share capital at the threshold stage of the settlement application. Despite these shortcomings, the Settlement Commission allowed the application, made the additions on share capital, and granted immunity from penalty and prosecution. The Revenue challenged this decision, arguing that the application lacked full and true disclosure, a prerequisite for the Settlement Commission to assume jurisdiction. The High Court observed that if an application lacks full and true disclosure, the Settlement Commission loses jurisdiction to entertain such applications or grants immunity from penalty and prosecution. The High Court set aside the order of the Settlement Commission, citing the Supreme Court's decision in the case of Ajmera Housing. The Hon'ble Supreme Court dismissed the Special Leave Petition filed by the assessee, upholding the High Court's decision. (AY. 2001-02 to 2007-08)

Pankaj Buildwell Ltd. and Group v. PCIT (2024) 467 ITR 161/ 301 Taxman 405 (SC)

Editorial: Ajmera Housing Corporation 326 ITR 642 [SC], PCIT v. Pankaj Buildwell Ltd. (2024) 161 taxmann.com 605 (Delhi)(HC), Ramesh Harbibhau Gawli v. ITO [2024] 167 taxmann.com 323 /467 ITR 9 (Bom)(HC)

S. 245D: Settlement Commission -Search and seizure -Suppression of sale -Abated on account of it not being true and full disclosure of unaccounted income on basis of volumetric report -Survey report -High Court also held that withdrawal of writ petition did not close any of rights of assessee to raise issue of illegality of survey report before Settlement Commission and, thus, by withdrawal of writ petition, matter of challenge to volumetric measurement report could not become final -SLP of Revenue is dismissed. [S. 132, 133A, 245C, 245D(4), Art. 136] 2505

Assessee-firm is carrying out mining activities. A search and seizure operation was carried out at mines allotted to assessee and it was found that assessee had carried on excess mining and assessee had grossly suppressed actual quantity of production of manganese ore. Thereafter, revenue prepared a volumetric report through a private architect to demonstrate total volume of manganese ore extracted by assessee. Assessee filed application under section 245C before Settlement Commission and disclosed unaccounted income and also paid taxes. However, Settlement Commission declared settlement application filed by asseseee as abated on account of it not being true and full disclosure of unaccounted income on basis of volumetric report dismissed the settlement application. On writ the Court held that private architect was merely qualified as bachelor in civil engineering and he did not have basic qualification of a geologist. Moreover, stripping ratio was not calculated properly and, thus, there were fundamental errors in volumetric measurement report. Further, report submitted by private architect was also not scientific and authentic. High Court held that since Settlement Commissioner dismissed statutory mining plan prepared under Mines and Minerals (Development and Regulation) Act, 1957 and approved by IBM and even dismissed report prepared by state government and mining officer as per direction of High Court and merely relied on volumetric report prepared by private architect, order passed by Settlement Commission is quashed. High Court also held that writ petition against Survey report prepared by a private architect to determine total volume of manganese ore extracted by assessee during certain period. Thereafter, assessee withdrew said petition and filed application before Settlement Commission. Settlement Commission by an order passed under section 245D(4) declared settlement application filed by assessee as abated on account of it not being true and full disclosure of unaccounted income on basis of volumetric report. High Court held that Settlement Commission had erred in upholding survey report merely on basis of withdrawal of writ petition filed before High Court. High Court also held that withdrawal of writ petition did not close any of rights of assessee to raise issue of illegality of survey report before Settlement Commission and, thus, by withdrawal of writ petition matter of challenge to volumetric measurement report could not become final. High Court remanded the matter to Settlement Commission. SLP filed against order of High Court is dismissed.

PCIT v. S. R. Ferro Alloys (2024) 300 Taxman 445 / 469 ITR 485 (SC)

Editorial: S. R. Ferro Alloys v. ITSC (2017) 81 taxmann.com 481/469 ITR 438 (MP)(HC)

S. 245D: Settlement Commission -Limitation -Delay in passing order not due to assessee -Delay could be condoned -SLP of Revenue is dismissed. [S. 245D(4A), 245D(4A)(iii),245HA(1)(iv), Art. 136] 2506

During the pendency of scrutiny assessment proceedings, the assessee preferred an application before the Settlement Commission offering additional income. The

Settlement Commission passed an order dated May 27, 2016 under section 245D(4) of the Act, and determined the total income and computed the tax liability. The assessee filed an application for rectification of the order before the Settlement Commission which came to be rejected. The assessee challenged the orders of the Settlement Commission which was allowed by the Single Judge. On appeal, division Bench dismissing the appeal that the judgment in the case of *Star Television News Ltd v. UOI (2009) 317 ITR 66(Bom)(HC), UOI v. Star Television News Ltd (2015) 373 ITR 528 (SC)* was not applicable to the applications filed subsequent to June 1, 2007. The single judge had meticulously arrived at a decision on marshalling the facts of the case vis-a-vis the ruling of Star Television News L td. with the relevant provisions applicable to the facts of the present case. The order was justified. Settlement Commission ought to have entertained rectification application filed by assessee. SLP of Revenue is dismissed. (AY. 2006-07 to 2012-13)

CIT (Central) v. RNS Infrastructure Ltd. (2024) 300 Taxman 101 /469 ITR 29 (SC)

Editorial: CIT (Central) v. RNS Infrastructure Ltd (2022) 286 Taxman 509/ 442 ITR 417 (Karn.)(HC)

2507 **S. 245D: Settlement Commission -Settlement of cases -Procedure -Application -Infrastructure Development -Works contractor, Settlement Commission after extensive discussion recording finding -Finding of fact -Writ petition is dismissed -SLP of Revenue is dismissed. [S. 80IA(4), Art. 136]**

Dismissing the petition of the Revenue the issue of filing of returns after the date prescribed by law had been taken up by the assessee before the court in a writ petition whereupon the court had set aside the order passed by the Central Board of Direct Taxes and condoned the delay on the part of the assessee in filing the returns *(DILIP BUILDCON LTD. v. UOI (2017) 9 9 ITR-OL 33 (MP) 2016 SCC OnLine MP 12234)*. Admittedly, the order passed by the court had attained finality as it had not been challenged by the assessee before any higher court. In such circumstances, the issue regarding delay in filing the return and the contention of the Department that the Settlement Commission had wrongly allowed the deduction under section 80-IA(4) of the Act, without taking into consideration the aspect of delay, did not survive. That on the question whether the assessee was only a works contractor, and the benefit of the provisions relating to work undertaken for infrastructural development had wrongly been allowed by the Settlement Commission, the Settlement Commission had discussed these aspects extensively and had recorded a finding in that regard. The finding in favour of the assessee was a finding of fact and did not warrant interference by the court in writ proceedings. SLP of Revenue is dismissed.

PCIT v. Dilip Buildcon Ltd. (2024)463 ITR 319/299 Taxman 366 (SC)

Editorial: PCIT v. Dilip Buildcon Ltd (2024)463 ITR 316 (MP)(HC)

2508 **S. 245D: Settlement Commission -Settlement of cases -Failure to make full and true disclosure -Additional income disclosed before Settlement Commission -Order granting immunity from penalty and prosecution is set aside. [S. 245C, 245D(4), 245H, Art. 226]**

On writ allowing the petition of the Revenue the Court held that despite acknowledging assessee group's inadequate disclosure regarding share capital/premium and absence of

a satisfactory explanation from its side, Income Tax Settlement Commission proceeded with settlement application Court held that if the disclosure was not full and truthful, ITSC loses its jurisdiction to entertain such an application as well as to provide any immunity to applicant from prosecution and penalties. On facts, ITSC had erred in law by approving application of assessee under section 245C. ITSC further went on to grant immunity from penalty and prosecution under section 245H, which was contrary to twin conditions stipulated in section 245H. ITSC acted in excess of jurisdiction conferred upon it under Act. Accordingly, the order passed by ITSC granting immunity from penalty and prosecution is set aside. (AY. 2001-02 to 2007-08)
PCIT v. Pankaj Buildwell Ltd. (2024)470 ITR 763/ 161 taxmann.com 605 (Delhi) (HC)

S. 245D: Settlement Commission -Settlement of cases -Procedure -Application -Search and seizure and Survey -Disclosing unaccounted income -Order of settlement Commission on basis of volumetric report of person not qualified and incompetent to evaluate mined ore submitted by department is unsustainable -Withdrawal of writ petition against survey proceedings with liberty to pursue issue of volumetric report before Settlement Commission -No presumption of estoppel against assessee by withdrawal of writ petition -Assessment of undisclosed income can be done only with reference to incriminating material recovered from search and not post search material -Report stating inaccuracies of report prepared by incompetent person and submitted by Department -Dismissal of statutory mining plan prepared under mines and minerals (Development And Regulation) Act, 1957 and approved by IBM -Order of Settlement Commission erroneous -Matter remanded to Settlement Commission. [S. 132, 132, 133A, 153A, 245C, 245D(4) Mines And Minerals (Development And Regulation) Act, 1957, Art. 226] 2509

Against the order of Settlement Commission the assessee filed writ petition before High Court. Allowing the petition, the Court held that order of settlement Commission on basis of volumetric report of person not qualified and incompetent to evaluate mined ore submitted by department is unsustainable. Withdrawal of writ petition against survey proceedings with liberty to pursue issue of volumetric report before Settlement Commission, no presumption of estoppel against assessee by withdrawal of writ petition. Assessment of undisclosed income can be done only with reference to incriminating material recovered from search and not post search material. Report stating inaccuracies of report prepared by incompetent person and submitted by Department. Dismissal of statutory mining plan prepared under mines and minerals (Development and Regulation) Act, 1957 and approved by IBM. Order of Settlement Commission is erroneous. Matter is remanded to Settlement Commission with the direction to pass appropriate order in accordance with law.
S. R. Ferro Alloys v. ITSC (2024)469 ITR 438 / 81 taxmann.com 481 (MP)(HC)

S. 245D: Settlement Commission -Settlement of cases -Procedure -Application -Conditions -Full and true disclosure -Revision of application -No full and true disclosure -Order of Settlement Commission is set aside. [S. 245C, 245D(4), 245H, Art. 226] 2510

On writ by Revenue, the Court held that ITSC acted in excess of jurisdiction conferred upon it under Act and, therefore, order passed by ITSC granting immunity from penalty

and prosecution to assessee is set aside. Court also held that the report of the CIT recorded that the assessee group has not adverted to full and true disclosure in the application. Accordingly, the order of Settlement Commission is set aside. (AY. 2001-02 to 2007-08)

PCIT v. Pankaj Buildwell Ltd. & Group (2024) 161 taxmann.com 605/ 341 CTR 127 / 8 NYPCTR 457 (Delhi)(HC)

2511 **S. 245D: Settlement Commission -Settlement of cases -Procedure -Application -Scope of provision -Power of ITSC to pass an order not limited only to aspects covered by application of settlement preferred by the assessee -ITSC empowered to render decision on issues which find mention in report of CIT -Order of Settlement Commission is affirmed. [S. 153A, 245C, 245D(4), Art. 226]**

The bunch of Writ Petitions filed before the Hon'ble Delhi High Court sought to challenge the common order of the ITSC on the ground that the addition made by the ITSC on account of commission and margin money was de hors the provisions of the Act and mandate of law prescribed in Chapter XIX-A. The Hon'ble Court observed that once application for settlement is accepted by the ITSC, it is bestowed with an authority to issue an order upon examination of records and report provided by the CIT. Thus, the power of ITSC to pass an order is not limited only to the aspects covered by the application for settlement preferred by the assessee, rather the ITSC is empowered to render a decision on such issues which find a mention in the report of the CIT or PCIT. Primary objective of settlement provisions is to entrust upon ITSC the mandate to compromise with the errant taxpayers which is strikingly different from the power of regular assessment employed by the AO in order to put an end to protracted litigations. Thus, it was ultimately held that addition made by ITSC was not manifestly erroneous as ITSC has meticulously exercised its powers taking into consideration the underlying intent of settlement process. Order of Settlement Commission is affirmed. Writ petition of Assessee is dismissed. (AY. 2010-11 to 2015-16)

Harsh Dhanuka HUF v. PCIT (2024) 469 ITR 162 / 164 taxmann.com 193 /341 CTR 154 (Delhi)(HC)

2512 **S. 245D: Settlement Commission -Settlement of cases- Procedure -Application -Unexplained investments -Search -Jewellery -Conclusion of Settlement Commission by accepting explanation in spirit of settlement could not be faulted calling for interference in exercise of writ jurisdiction. [S. 115BBE, 132, 245D(4), 245I, Art. 226]**

Assessee is an individual assessee and its source of income was from salaries. Search under section 132 was conducted by department during which records/documents and jewellery was seized and an undisclosed income was offered for tax. However, additional income offered before Settlement Commission was stated to be an amount constituting cash gifts received from relatives and well-wishers. Assessee also filed affidavit declaring that she had not maintained details of cash gifts. However, Settlement Commission observed that if indeed assessee had disclosed cash gifts as cash in hand in wealth tax returns, alleged unaccounted cash would have stood explained as noticed in search and there would have been no occasion for disclosure as made before Settlement Commission. Accordingly, Settlement Commission deemed additional income offered for

tax as being fair and reasonable. The Revenue filed writ petition before the High Court on the ground that the order of Settlement Commission is not proper. Dismissing the petition the Court held that since assessee filed an affidavit under Rule 8 of Income-tax Settlement Commission (Procedure) Rules, 1997 explaining receipt of gifts from friends and relatives and such declaration had not been rebutted by revenue by placing any additional facts to contrary, conclusion of Settlement Commission by accepting explanation in spirit of settlement could not be faulted calling for interference in exercise of writ jurisdiction.

PCIT v. Umah Agarwal (Smt.) (2024) 300 Taxman 493 /(2025) 474 ITR 253 (Karn.) (HC)

S. 245D: Settlement Commission -Settlement of cases -Settlement Commission has wide power under Chapter XIX-A -High Court can interfere only if decision of Settlement Commission is not in accordance with provisions of Act or if it were based on bias, fraud and malice. [S. 80IB(10), 245D(4), 245I, 292C(i)(ii), Art. 226] 2513

The Settlement Commission passed an order dated July 31, 2013 under section 245D(4) of the Act whereby the Settlement Commission allowed the assessee's settlement application and also granted immunity from penalty and prosecution. Admittedly, in the statement of the assessee's director recorded under section 132(4) of the Act, the assessee offered additional income of Rs. 12,16,83,252 which included Rs. 11,95,51,448 on account of alleged bogus purchases. The Settlement Commission allowed capitalization to the extent of Rs. 8,33,53,000 and consequently held depreciation may be allowed. On a writ petition against the order the Revenue contended that on the claim of deduction made by the assessee under section 80-IB(10) of the Act a sum of Rs. 2,07,51,048 should be treated as income from other sources. It also submitted that the capitalisation was erroneous. Dismissing the writ petition, the Court held that it was the Revenue's case that the claim to deduction under section 80IB(10) of the Act was not examined in accordance with section 245D(3). Calling for a report is solely at the discretion of the Settlement Commission and the court should not interfere with an exercise of discretion by the Settlement Commission. Moreover, an ad hoc disallowance of expenses had been made by the Revenue for the assessment years 2005-06, 2006-07, 2007-08, 2008-09 in the assessment order passed under section 143(3) read with section 153A of the Act for those years. Detailed working and explanation in respect thereof was already available as a part of the settlement application and submissions. The issue raised being a question of fact as to the quantum of deduction to be allowed under section 80-IB(10) of the Act could never qualify as ground for interference by this court under article 226 of the Constitution of India. That the assessee was subjected to search and seizure action under section 132 of the Act on March 29, 2011. In the course of search, the investigation team of the Revenue came across a diary which was seized and showed that the assessee had entered into certain transactions of purchases which were alleged to be bogus. The director of the assessee in his statement recorded under section 132(4) of the Act accepted the total of such bogus purchases at Rs. 11,95,41,448. The seized diary showed that part of the cash generated by the company from bogus purchases was utilized for the purposes of incurring capital expenditure at its office premises. Under the provisions of section 292C(1) the Settlement Commission could presume the document to be true. Since the bogus purchases were offered to tax by

deduction from the work-in-progress, the corresponding utilization of the cash towards incurring of capital expenditure was treated as an addition to fixed assets eligible for depreciation. The High Court could not interfere with the order of the Settlement Commission on this ground. Referred, J*yotendrasinhji v. S. I. Tripathi (1993) 201 ITR 611 (SC), Kotak Mahindra Bank Ltd. v. CIT (2023) 458 ITR 113 (SC)* (AY. 2005-06 to 2011-12) *CIT v. ITSC (2024)465 ITR 19/161 taxmann.com 495 (Bom.) (HC)*

2514 **S. 245D: Settlement Commission -Settlement of cases -Settlement Commission has wide powers under Chapter XIX-A -High Court can interfere only if decision of Settlement Commission is not in accordance with provisions of Act or if it were based on bias, fraud and malice. [S. 245D(4), 245I, Art. 226]**

Held dismissing the writ petition, that the Settlement Commission was entitled to exercise discretion while passing the order and it had exercised its discretion. There was neither violation of any mandatory procedure prescribed under any of the sections of Chapter XIX-A of the Act nor any violation of any of the rules of natural justice. Further, it could not be said that the reasons assigned by the Settlement Commission for granting relief sought for by the assessee had no nexus to the decision taken. The order of the Settlement Commission was valid. Chapter XIX-A makes it clear that the Settlement Commission exercises many powers which affect all the rights of the parties before it and vests in it powers to grant immunity from prosecution and penalty, to investigate into many matters and to enjoy conclusiveness regarding its orders or settlement. *Jyotendrasinhji v. S. I. Tripathi (1993) 201 ITR 611 (SC).* (AY. 2010-11 to 2016-17) *PCIT v. ITSC (2024)465 ITR 45 (Bom.) (HC)*

2515 **S. 245D : Settlement Commission-Settlement of cases-Procedure-Application-Settlement Commission empowered to examine and adjudicate all aspects arising from application and accord full and complete closure to all disputes-Entitled to exercise all powers that are otherwise vested in Income-Tax Authority-Explaining transaction and surrendering disputed receipt-Cannot be treated as non-disclosure in application-Voluntary surrender accepted-Procedure adopted by Settlement Commission neither incorrect nor erroneous. [S. 245C, 245D(4), 245E, 245F, 245I, Art. 226]**

Dismissing the petition of Revenue the Court held that that the Settlement Commission empowered to examine and adjudicate all aspects arising from application and accord full and complete closure to all disputes and is entitled to exercise all powers that are otherwise vested in Income-Tax Authority. Court also held that explaining transaction and surrendering disputed receipt, cannot be treated as non-disclosure in application. The Settlement commissioner has rightly accepted the voluntary surrender by the petitioner. Court also observed that the procedure adopted by Settlement Commission was neither incorrect nor erroneous. (AY. 1995-96 to 25-5-2000)

PCIT v. Trent East West LPG Bottling Ltd. (2024) 464 ITR 608 /161 taxmann.com 516/ 341 CTR 93 (Delhi) (HC)

S. 245D: Settlement Commission -Settlement of cases -Procedure -Application -Infrastructure Development -Works contractor, Settlement Commission after extensive discussion recording finding -Finding of fact -Writ petition is dismissed. [S. 80IA(4), Art. 226] 2516

Dismissing the petition of the Revenue, the issue of filing of returns after the date prescribed by law had been taken up by the assessee before the court in a writ petition whereupon the court had set aside the order passed by the Central Board of Direct Taxes and condoned the delay on the part of the assessee in filing the returns *(DILIP BUILDCON LTD. v. UOI (2017) 9 9 ITR-OL 33 (MP) 2016 SCC OnLine MP 12234).* Admittedly, the order passed by the court had attained finality as it had not been challenged by the assessee before any higher court. In such circumstances, the issue regarding delay in filing the return and the contention of the Department that the Settlement Commission had wrongly allowed the deduction under section 80-IA(4) of the Act, without taking into consideration the aspect of delay, did not survive. That on the question whether the assessee was only a works contractor, and the benefit of the provisions relating to work undertaken for infrastructural development had wrongly been allowed by the Settlement Commission, the Settlement Commission had discussed these aspects extensively and had recorded a finding in that regard. The finding in favour of the assessee was a finding of fact and did not warrant interference by the court in writ proceedings.

PCIT v. Dilip Buildcon Ltd (2024)463 ITR 316 (MP)(HC)

Editorial: SLP of Revenue is dismissed, PCIT v. Dilip Buildcon Ltd. (2024)463 ITR 319 (SC)

S. 245D: Settlement Commission -Settlement of cases -Procedure -Application -Amendment by Finance Act, 2007 -Settlement Commission called report -Failure to submit report with in time-Direction to proceed with application is valid -Writ petition of Revenue is dismissed. [S. 245D(1), 245D(2B), 245D(2C), 245D(4), Art. 226] 2517

Court held that Section 245D(2C) provides that within 15 days of the receipt of a report, the Commission could declare the application to be invalid, after hearing the applicant. The second proviso also requires that if no report has been furnished within the period, the Commission shall proceed further even in the absence of the report of the Commissioner. Dismissing the petition the Court held that the request for adjournment made on the ground of the officer being deputed for election duty, was considered and rejected. The Commission specifically noticed that the report of the Assessing Officer was due on February 28, 2019, while the general elections were announced only on March, 10, 2019. The Department's request to take up the case after the general elections was also found to be not permissible since the elections would be over only on May 23, 2019 and the applications were getting time barred as on May 31, 2019. The Department was also represented before the Commission. Accordingly, the order under section 245D(1) passed on November 24, 2017 directing the application to be proceeded with is valid. (WP No. 25595 of 2019 dt. 6-2-2024)

PCIT v. UOI (2024)462 ITR 150 /337 CTR 876 (Pat.)(HC)

2518 **S. 245D: Settlement Commission -Settlement of cases -Procedure -Assessee paid taxes on own calculations -Compliance of the provisions of section 245D (2D) -No abatement -Matter remanded to Interim Board. [S. 245AA, 245C, 245D(2D), 245HA(1)(ii), Art. 226]**
Where the assessee filed applications for settlement of cases under section 245C and complied with provisions of section 245D(2D) by paying additional tax and interest on disclosed income as required, the order declaring abatement of the assessee's applications was erroneous and contrary to provisions of section 245D(2D). (AY. 2002-03 to 2004-05)
Mahesh Gupta v. ITSC [2023] 294 Taxman 537 / [2024] 461 ITR 267 (Bom.) (HC)

2519 **S. 245D: Settlement Commission -Settlement of cases- Granting Immunity from penalty or prosecution provided conditions imposed by it fulfilled -non-fulfilment of conditions -Immunity cannot be claimed. [S. 142(2A), 245C, Art. 226]**
Dismissing the petition the Court held, that the immunity from penalty and prosecution was granted on condition of the assessee satisfying the Settlement Commission's order which also prescribed a specific time frame for payment. The Settlement Commission's order stated clearly that if the payments were not made in accordance with the directions therein automatically, the immunity would stand withdrawn.
Patliputra Builders Ltd. v. ITSC (2024)466 ITR 72 (Pat.) (HC)

2520 **S. 245R: Advance rulings -Non-Resident -Entitlement to benefits under double taxation avoidance agreement -Transfer of shares -Transfer of shares in foreign company by non-resident assessee to another non-resident company -Treat shopping -Mere routing of investments through Mauritius cannot result in drawing adverse inference or raise presumption of illegality or treaty abuse -Order of Authority for Advance Rulings denying benefits illegal and unsustainable -Instructions of Central Board Of Direct Taxes -Certificate of residence issued by Mauritius Authorities would constitute sufficient and valid evidence -Circular No. 682, Dated 30-3-1994 (1994) 207 ITR (St) 7, Circular No. 789, Dated 13-4-2000 (2000) 243 ITR (St) 57 -Applicant is not liable to tax on capital gains on transfer of shares to another non-resident -Treaty will prevail over provisions of Act- Legal Fiction Comprised In Article 27A-Subsidiaries have distinct and independent persona -Order of Authority for Advance Rulings holding that Article 13(3A) applicable only to sale of shares of resident company assessee not covered by Article 13(3A) is unsustainable -Economic substance -Assessee Transferring shares on which investments were made from capital contributions of its shareholders -Extent of investments, holding period and dividend declared to shareholders proving that contention of revenue that assessee lacked economic substance erroneous -Beneficial owner -Concept of beneficial owner gets attracted only if recipient of income or holder of asset mere depository -No finding that income controlled and regulated by third party -Allegation of revenue that sum earned from transfer of shares being beneficially held by assessee is misconceived and untenable -Resolution of Board -Power conferred on certain individuals to operate bank accounts -No payments authorised without concurrence of members of Board Of Directors -Merely because two members of board were connected with larger conglomerate it could not be held that assessees were reduced to mere puppets -Avoidance of tax -Company -Corporate**

entity -Non-Resident -Lifting of corporate veil -Department must first establish treaty abuse -Share transaction duly grand fathered by virtue of Article 13(3A) -Order of Authority For Advance Rulings holding that share transaction aimed at tax avoidance arbitrary and illegal -Assessee is entitled to benefits under Article 13(3A) of Double Taxation Avoidance Agreement -Interpretation of taxing statutes -Domestic legislation cannot be interpreted in a manner to be in direct conflict with Double Taxation Avoidance Agreement provision or with over-riding effect over provisions of Double Taxation Avoidance Agreement -DTAA -India -Mauritius. [S. 45 90, 119,245R(2) Art. 13(3) 13(3A), 27A]

The assessees undertook investment activities and earned long-term capital appreciation and investment income. The Assessee made application before Authority for Advance ruling for claiming benefit of double taxation benefit and other reliefs. Authority for Advance Ruling rejected the application. On writ, allowing the petitions, mere routing of investments through Mauritius cannot result in drawing adverse inference or raise presumption of illegality or treaty abuse. Order of Authority for Advance Rulings denying benefits illegal and unsustainable. Certificate of residence issued by Mauritius Authorities would constitute sufficient and valid evidence. Circular No. 682, Dated 30-3-1994 (1994) 207 ITR (St) 7, Circular No. 789, Dated 13-4-2000 (2000) 243 ITR (St) 57. Applicant is not liable to tax on capital gains on transfer of shares to another non-resident. Treaty will prevail over provisions of Act. Subsidiaries have distinct and independent personas. Order of Authority for Advance Rulings holding that Article 13(3A) applicable only to sale of shares of a resident company and thereby that the assessee is not covered by Article 13(3A) is unsustainable. Court also held that the law does not raise a presumption of illegality or disreputability to foreign investments that may be made through entities domiciled in Mauritius. It would be wholly incorrect to presume investments originating from Mauritius as being inherently dubious or disreputable. Thus, the mere fiscal residence of an entity in Mauritius would not give rise to a presumption of infamy or constrain courts to approach such investments through what are metaphorically referred to as tinted lenses. The Supreme Court in unequivocal terms held that there was nothing inherently abhorrent in treaty shopping given the economic compulsions of nations who are desirous of attracting foreign investment. Mauritius and entities domiciled in there are neither liable to be viewed on a negative plane nor are they obliged to satisfy a separate standard of legitimacy. The stand struck by the two Contracting States clearly dispels any assumption of a roll back of the Mauritian route or an avowed intent to place residents of that nation to a stricter degree of proof. The data relating to investments flowing from that nation and in terms of the facilitative Double Taxation Avoidance Agreement regime lays all doubts, in this respect, to rest. The tests of a legitimate investment stand duly incorporated in the Double Taxation Avoidance Agreement between India and Mauritius and the various protocols entered into from time to time representing the exclusion of those which are not intended to reap the benefits of the Convention. The adoption of the limitation of benefits provisions was clearly intended to subserve those objectives. The intent of the Contracting States to adhere to the globally accepted standard of substance over form stands further fortified from the recent protocol which has been executed and is yet to be notified. The Union and the Revenue have accepted the legal position as enunciated

in the Supreme Court decisions in *UOI v. Azadi Bachao Andolan (2003) 263 ITR 706 (SC)* and *Vodafone International Holdings B. V. v. UOI (2012) 341 ITR 1 (SC),* which had acknowledged the invocation of the substance over form principles to the confined and extremely narrow contingencies where the Revenue may be recognised as being justified in questioning the motives of an investment transaction. The principles of substance over form must be considered to be the prevailing norm and the Revenue is entitled to doubt the bona fides of a transaction only in those situations where it is found that the transaction involves a sham device intended to achieve illegal objectives or formulated based on illegal motives. (AY. 2018-19).

Tiger Global International III Holdings v. AAR (2024)468 ITR 405/ 165 taxmann.com 850/341 CTR 713 (Delhi) (HC)

Tiger Global International II Holdings v. AAR (2024)468 ITR 405/ 165 taxmann.com 850/341 CTR 713 (Delhi)(HC)

Tiger Global International IV Holdings v. AAR (2024)468 ITR 405/ 165 taxmann.com 850/ 341 CTR 713 (Delhi) (HC)

Editorial: Refer, Tiger Global International Ii Holdings, Mauritius, In Re (2020) 429 ITR 288 / 116 taxmann.com 878 / 189 DTR 90 / 315 CTR 160 (AAR)/)/ Tiger Global International Ii Holdings v Authority For Advance Rulings (Income-Tax) (2024) 165 taxmmann.com 405 / 468 ITR 405 (Delhi) (HC), operation of the order is stayed , AAR v. Tiger Global International Ii Holdings (2025)303 Taxman 252 (SC)

2521 **S. 246A: Appeal -Commissioner (Appeals) -Stay of demand -Not proved prima facie case -Condition of pre deposit of 20 Per Cent of demand for grant of stay discretionary -Financial stringency not proved -Writ petition is dismissed. [S. 156, 220 (6), Art. 226]**

Held, dismissing the petition, that the power vested under section 220(6) is discretionary and it is not mandatory to direct a pre-deposit of 20 per cent of the assessed amount to obtain stay of deposit at the stage of filing the appeal before the Commissioner (Appeals). The Assessing Officer in the assessment order had given a number of cogent findings against the assessee. The Assessing Officer after analysing a number of relevant facts had held that the transaction between the assessee and the foreign entity was based on "reverse engineering". The assessee had not been able to make out a prima facie case in its favour. The assessee's plea of financial stringency based on its balance-sheet did not inspire confidence as according to the Assessing Officer, the-accounts had not been properly maintained. The court however observed that its view in the writ proceedings should not prejudice either of the parties at the stage of the appellate proceedings.

PPK Newsclick Studio Pvt. Ltd. v. PCIT (2024)469 ITR 612 / 157 taxmann.com 468 (Delhi) (HC)

2522 **S. 246A: Appeal -Commissioner (Appeals) -Appealable orders -Appealable orders -Sales tax subsidy -Shown taxable in the return -CIT(A) is justified admitting the additional ground -Order of Tribunal is affirmed. [S. 4, 139(5), 254((1)]**

Held that when the subsidies received is held to be capital receipts and not an income, and hence not liable to tax, the Tribunal, in the exercise of its power under section 254 of the Act, was justified to uphold this claim even when no revised return under

section 139(5) of the Act was filed before the Assessing Officer. (AY. 2009-10 to 2013-14 2015-16)
PCIT v. Shantinath Detergents (P.) Ltd. [2024] 461 ITR 302(Cal.) (HC)

S. 246A: Appeal -Commissioner (Appeals) -Pendency of appeals -Stay of recovery -No recovery should be made from the assesses during the pendency of the Appeals. [S. 220, 226, Art. 226] 2523

Writ petitions were filed before the Honourable Gujarat High Court on the ground that the Commissioner of Income Tax (Appeals) are not disposing the pending Appeals on one hand and the recovery proceedings are initiated by the respondent -Income Tax Department for the outstanding demand. Some of the appeals were pending for more than four years. The Revenue has filed an affidavit-in-reply showing the details of total appeals pending before the appellate authority as on 26.09.2024 are as under:

Category	**Pending appeals as on 26. 09. 2024**
Faceless CIT (A)	3,90,878
Non-Faceless CIT (A)	80,170
JCIT(A)	1,09,140
Total	**5,80,188**

The Hourable Court directed the Revenue to provide the mechanism for disposal of pending appeals. However, the Revenue has not came out with any concrete proposal or the mechanism for disposal of the pendency of appeals. Honourable Court observed that if the Respondents are not interested in resolution of the issue of pendency of the Appeals the manner in which it ought to have been resolved by classifying the Appeals as per the issues concerning the recurring issues, covered issues, etc. The Court held that no recovery should be made from the assessees during the pendency of the Appeals. Therefore, in all these petitions, there shall be no recovery of any outstanding dues from the petitioners whose Appeals are pending during pendency of petitions.
Om Vision Infraspace Private Limited v. ITO (2024) 167 taxmann.com 709 (Guj.) (HC)

S. 246A: Appeal -Commissioner (Appeals) -Appealable orders -Sole beneficiary of private discretionary Trust -Appeal could be filed beneficiary only and not by trust -Beneficiary is directed to file an appeal before CIT(A) by filing application for condonation of delay. [S. 160, 166, 250] 2524

A minor was the sole beneficiary of the assessee-trust (a private discretionary trust). The Assessing Officer found that the minor during the demonetization period, i. e., 9-11-2016 to 30-12-2016 had deposited certain amount in the bank account of the assessee-trust and having not been satisfied with her explanation as regards the source of cash deposits in the bank framed the assessment in the hands of the minor and held the aforesaid amount as her unexplained money under section 69A. The CIT(A) up held the order of the AO. On appeal the Tribunal held that since as per provisions of section 246A an appeal against order of assessment could only be filed before Commissioner (Appeals) by assessee against whom assessment order had been passed and minor was a separate and distinct entity from assessee-trust who had filed appeal

before Commissioner (Appeals), order passed by Commissioner (Appeals) suffered from a serious infirmity and could not be sustained. Accordingly, the assessee's claim that as the trust is the primary assessee, no infirmity arises from the fact that the latter had filed the appeal before the Commissioner (Appeals) against the assessment order which was never passed in its case cannot be accepted. Tribunal also held that as the minor had for the aforesaid misconception failed to carry the impugned order of the Assessing Officer by way of a proper appeal before the Commissioner (Appeals), she shall remain at a liberty to assail the impugned assessment order before the Commissioner (Appeals) who is directed to adopt a liberal approach regarding the reasons leading to the delay in preferring of the appeal before him. (AY. 2017-18)

Kajal Deepak Trust v. ITO (2024) 167 taxmann.com 378 (Raipur) (Trib)

2525 **S. 246A: Appeal -Commissioner (Appeals) -Appealable orders -Appeal -Non-disposal of rectification application within period of six months -Quantum of refund -AO is directed to entertain the said application under s. 154 and dispose it of as per law after verification of records. [S. 154(8),244A]**

As per the direction of the CIT(A)'s order dt. 4th Jan., 2013, the assessee filed an application under S. 154 before the AO for proper working of quantum of refund due to it along with interest thereon under S. 244A which was not disposed of within the statutory time period of six months as per s. 154(8). The assessee filed an appeal before the CIT(A) which was dismissed. On appeal the Tribunal held that since no order was ever passed by the AO, the assessee was not aware about the fate of its application filed under s. 154. Said application under s. 154 and grievance petitions were disposed of together by a communication dtd. 4th July, 2020. Since the AO failed to discharge his statutory duty in passing the order disposing the application filed under s. 154, the assessee was justified in raising this issue before the appellate authority as this was the only recourse available to it. In view of Circular No. 73, dtd. 7th Jan., 1972, a rectification application can be disposed of by the AO even after the expiry of the statutory time-limit on merits and in accordance with law. Inference drawn by the assessee that the communication dtd. 4th July, 2020 is nothing but refusal to admit his claim under s. 154 is not misplaced. AO is directed to entertain the said application under s. 154 and dispose it of as per law after verification of record. Circular 73 dt. 7th Jan, 1972, Circular No. 4. dtd. 20th June, 2012. (AY. 1991-92)

S. K. Sharma Contractor v. ITO (2024) 231 TTJ 354/ 239 DTR 161 / 38 NYPTTJ 689 (Delhi) (Trib)

2526 **S. 246A: Appeal -Commissioner (Appeals) -Appealable orders -Delay of 133 days -Reasonable cause -Delay is condoned -Matter remanded to the CIT(A) to decide on merits. [S. 12A, 68, 253 (5)]**

Tribunal condoned the delay of 133 days in filing of an appeal before CIT(A). Tribunal held that when substantial justice and technical consideration are pitted against each other, the cause of substantial justice deserves to be preferred, for the other side cannot claim to have vested right for injustice being done because of non-deliberate delay. (AY. 2014-15 to 2016-17)

Apollo Education Trust v. Asst. CIT (2024) 115 ITR 76 (SN)(Bang.) (Trib)

S. 246A: Appeal -Commissioner (Appeals) -Appealable orders -Delay of 9 days -Delay is condoned -CIT(A) is directed to condone the delay and decide on merits. [S. 200A(1)(c), 234E] 2527

Tribunal condoned the delay of 9 days in filing of appeal and directed to CIT(A) to decide on merits. (AY. 2013-14)

Balaji Graphics Art. P. Ltd v. ACIT(2024) 115 ITR 80 (SN)(Mum.) (Trib)

S. 246A: Appeal -Commissioner (Appeals) -Appealable orders -Only those specifically mentioned in Section -Fee -Default in furnishing the statements -Letter of ITO to assessee for recovery of outstanding demand -Not appealable. [S. 234E] 2528

Held that the assessee can file appeals before the Commissioner (Appeals) only against the orders passed under specific sections mentioned in section 246A of the Income-tax Act, 1961. The assessee had filed appeal against the letter of the ITO to the assessee for recovery of the outstanding demand under section 234E of the Act. Since the letter of the ITO was not mentioned in section 246A of the Act, it was not an appealable order for the purpose of section 246A of the Act. The Commissioner (Appeals) had rightly dismissed the appeal of the assessee as not maintainable. (AY. 2013-14, 2014-15, 2015-16)

Padmakar Vishwas Date v. ITO (2024)110 ITR 48 (SN)(Pune) (Trib)

S. 246A: Appeal-Commissioner (Appeals) -Appealable orders -Penalty -Not adjudicating on merits -Matter remanded. [S. 271(1)(c)] 2529

Held that CIT (A) had made a limited adjudication on technical aspect, and did not make any adjudication on the merits. Therefore, the matter was remanded to the CIT (A) for proper adjudication on the merits considering and adjudicating the objections raised by the assessee in the cross-objections. (AY. 2012-13)

Balaji Farms and Reality v. ACIT (2024) 111 ITR 30 (SN) (Indore) (Trib.)

S. 249: Appeal -Commissioner (Appeals) -Condonation of delay-Form of appeal and limitation -Delay of 11 days -Non availability of tax consultant -Delay is condoned -CIT(A) is directed to decide the issue on merits. [S. 80P, 246A, 250, Art. 226] 2530

Assessing Officer disallowed deduction claimed by assessee under section 80P. Assessee filed an appeal before Commissioner (Appeals) with a delay of 11 days and sought condonation of delay in filing appeal stating that delay was due to non-availability of its legal consultant. Commissioner (Appeals) refused to condone delay and dismissed appeal in limine. On writ the Court held that since filing an appeal in tax matters required legal and technical assistance, reason advanced by assessee for condoning delay was sufficient and delay had to be condoned by Commissioner (Appeals). Delay is condoned and Commissioner (Appeals) is directed to consider assessee's appeal on merits. Matter remanded.

Meenachil Taluk Cooperative Employees Cooperative Society Ltd. v. CIT (Appeals) (2024) 300 Taxman 338 (Ker.) (HC)

2531 **S. 249: Appeal -Commissioner (Appeals) -Form of appeal and limitation -Delay of 115 days in preferring appeal -Appeal was dismissed -Writ was dismissed by single judge bench -On appeal the delay was condoned and CIT(A) is directed to decide on merits. [S. 246A, 249(3), Art. 226]**

There was delay of 115 days in filing of appeal. The delay was not condoned. On writ the single judge dismissed the writ petition. On appeal the Court condoned the delay and directed the CIT(A) to decide on merits. (AY. 2016-17)

Antony Sunny v. CIT (A) (2024) 338 CTR 759 (Ker) (HC)

Editorial: Order of single bench is set aside, Antony Sunny v. CIT (A) (2024) 338 CTR 759 (Ker.) (HC)

2532 **S. 249: Appeal -Commissioner (Appeals) -Form of appeal and limitation -Delay of 115 days in preferring appeal -Appeal was dismissed -Writ was dismissed. [S. 246A, 249(3), Art. 226]**

There was delay of 115 days in filing of appeal. The delay was not condoned. The single judge dismissed the writ petition. (AY (AY. 2016-17) (SJ)

Antony Sunny v. CIT (A) (2024) 338 CTR 757 (Ker.) (HC)

Editorial: Order of single judge is set aside, Antony Sunny v. CIT (A) (2024) 338 CTR 759 (Ker.) (HC)

2533 **S. 249: Appeal -Commissioner (Appeals) -Form of appeal and limitation -Direction to pay part of demand in instalments within time frame as stipulated by Court -Department is given liberty to recover tax on failure to satisfy conditions of payment. [S. 69, 115BBE, 143(1), 144, 144B, 147, 249(4)(b), 250, Art. 226]**

The assessee, which was in the real estate business, did not file its return of income. Assessment proceedings were initiated following which an order was passed under section 147 read with sections 144 and 144B of the Income-tax Act, 1961 on the findings that there were some transactions of purchase and sale of immovable property in the assessment year 2016-17 and unexplained investment under section 69 and bringing the income to tax at a higher rate of tax under section 115BBE. On a writ petition against the assessment, the court relegated the assessee to the remedy of appeal. The assessee filed an appeal before the authority under the Faceless Appeal Scheme, 2021 ([2022] 440 ITR (St.) 15) with an application for stay. On a writ petition contending that for all the subsequent assessment years, including for the assessment year 2023-24, the assessee had filed loss returns and these had been accepted under section 143(1) and that therefore, it should be permitted to prosecute the appeal in terms of the proviso to sub-section (4) of section 249 against the order of assessment without payment of tax. Court held that since it was not disputed that the proviso to section 249(4)(b) was applicable, the appeal filed by the assessee before the authority under the Faceless Appeal Scheme, 2021 along with an application for stay could be disposed of on the merits after affording an opportunity of hearing on the condition that it remitted a total sum of Rs. 12 crores against the demands raised for the assessment year 2016-17 in eight equal instalments commencing from April 15, 2024 for maintaining the appeal which should be adjudicated only after the payment of the stipulated amount. If the assessee failed to remit the amounts as directed, the Department could proceed for

recovery of demand as raised in the assessment order passed under section 147 read with sections 144 and 144B. (AY. 2016-17)
Alka Ventures Pvt. Ltd. v. Add. CIT (2024)466 ITR 390/161 taxmann.com 701 (Ker.) (HC)

S. 249: Appeal -Commissioner (Appeals) -Form of appeal and limitation -Return not filed -Failure to pay admitted taxes despite of several opportunities -Refusal to admit appeal by CIT(A) is affirmed. [S. 246A, 249(4)(b)] 2534
Tribunal affirmed the order of CIT(A) wherein the Tribunal dismissed the appeal of the assessee for failure to pay admitted taxes despite of several opportunities. (AY. 2011-12, 2012-13, 2014-15, 2017-18)
Dy. CIT v. Nagin A. Vaghela (2024)116 ITR 25 (SN)(Ahd.) (Trib)

S. 249: Appeal-Commissioner (Appeals) -Form of appeal and limitation -Delay of 454 days is condoned -Survey -Non-payment of admitted tax -Matter remitted to Commissioner (Appeals) to decide on merit for fresh consideration. [S. 133A, 249(3) 249(4)(b)] 2535
Delay of 454 days in filing of appeal is condoned. The Commissioner (Appeals) had not passed the order on the merits hence, the matter is remitted back to him for a fresh consideration after giving the assessee a reasonable opportunity of being heard. (AY. 2018-19, 2019-20)
Hemant V. More v. ACIT (2024) 115 ITR 43 (SN)(Mum.) (Trib)

S. 249: Appeal -Commissioner (Appeals)-Form of appeal and limitation -Affidavit -Missing E-Mail received -No reason to dis believe the affidavit -Delay condoned – Matter remanded to CIT(A) to decide on merit. [S. 246A, 271(1)(c)] 2536
The Commissioner (Appeals) dismissed the appeal on the ground that the assessee had not demonstrated sufficient cause for the condonation of the delay. Tribunal held that the assessee gave the reasons for condonation before the Commissioner (Appeals) and has even filed an affidavit of the concerned employee who was responsible for receiving e-mails on behalf of the assessee. The said affidavit showed that that employee inadvertently failed to notice the e-mail containing the order in question sent to the e-mail ID of the assessee. She has given detailed reasons for missing the e-mail. There was no reason to disbelieve the affidavit. Delay is condoned, the CIT(A) is directed to dispose of the appeal on merit. (AY. 2012-13)
Naresh Topandas Aidasani v. Dy. CIT (2024)114 ITR 76 (SN)(Mum.) (Trib)

S. 249: Appeal -Commissioner (Appeals) -Form of appeal and limitation -Delay -Matter remanded back to Commissioner (Appeals) to deal with assessee's application seeking condition of delay. [S. 11, 12A, 143(1), 154, 250] 2537
Assessing Officer in intimation made under section 143(1) denied benefit of exemption under section 11 claimed by assessee-trust. Commissioner (Appeals) dismissed appeals filed by assessee as non-maintainable on account of substantial delay in filing of appeals. Tribunal held that appeals required to be restored back to Commissioner (Appeals) first to deal with assessee's application seeking condonation of delay and thereafter to deal with merits of case. (AY. 2013-14, 2015-16)
Chamanlal Shantaben Parekh & Rohini Suketu Parekh Public Charitable Trust v. ITO (2024) 209 ITD 406 (Ahd.) (Trib)

2538 **S. 249: Appeal -Commissioner (Appeals) -Form of appeal and limitation –Appeal not to be admitted unless tax is paid -Business loss -No liability to pay advance tax -Section 249(4)(b) not applicable -Appeal to be decided on merits. [S. 249(4)(b)]**
Allowing the appeal, the Tribunal held that the invocation of section 249(4)(b) by the CIT(A) was incorrect when the assessee had incurred a business loss and had no liability to pay advance tax. In this case, the assessee did not file a return of income (ROI) for the assessment year 2011-12. The assessee had losses during the year. The CIT(A) dismissed the appeal on the grounds that no advance tax was paid as required under section 249(4)(b) when no return of income is filed. The Tribunal held that if an assessee has incurred a loss and had no taxable income, section 249(4)(b) would not apply, as there was no requirement to pay advance tax. The Tribunal restored the appeal to the CIT(A), directing it to be admitted and decided on merits. (AY. 2011-12, 2012-13)
Rohini Enterprises P. Ltd. v. ITO (2024) 112 ITR 39 (SN) (Surat)(Trib)

2539 **S. 249: Appeal -Commissioner (Appeals) -Form of appeal and limitation -Advance tax -Merely on technical ground, appeal before Commissioner (Appeals) could not have been dismissed. [S. 249(4)(b)]**
Held, allowing the appeal, that the provisions of section 249(4)(b) of the Act are clear that the appeal before the Commissioner (Appeals) should be admitted only when the assessee paid the advance tax where return of income has not been filed. The proviso to the section also prescribes that the assessee will get exemption from this clause if the application is made before the Commissioner (Appeals) for not filing return of income or paying advance tax. But in the present case in peculiar circumstances, the assessee had explained that the assessee herself had not obtained the property but her son had paid the amount for purchase of the property from his own funds. In fact, the assessee's son was a joint owner of the property and for the sake of the conveyance deed, the stamp deed was lesser the assessee's name has been utilised in the conveyance deed. The direct relation between the mother and son should have been considered by the Assessing Officer as well as by the Commissioner (Appeals). In the peculiar circumstances, the proviso to section 249(4)(b) of the Act should have been pointed out by the Commissioner (Appeals) during the hearing which the Commissioner (Appeals) failed to do. Merely on the technical ground, the appeal before the Commissioner (Appeals) could not have been dismissed and in fact after seeing the merits of the case, the transaction was not doubted and the investment made by the son of the assessee was also not questioned by the Assessing Officer. Therefore, the appeal of the assessee was allowed on the peculiar facts of the assessee's case. The order could not be treated as a precedent. (AY. 2013-14)
Rajlaxmi Satishkumar Sharma v. ITO (2024)111 ITR 69 (SN)(Ahd.) (Trib)

2540 **S. 249: Appeal -Commissioner (Appeals) -Form of appeal and limitation -Pre-deposit of tax -Advance tax -No taxable income -No obligation to pay advance tax -Order of CIT(A) refusing to admit appeal for hearing for non-payment of tax as per provisions of section 249(4)(b) is set aside -Directed to decide the appeal on merits. [S. 208, 249(4)(b)]**
Assessee, an agriculturist, derived agricultural income and sale proceeds on sale of agricultural lands against registered sale deeds. It had also deposited certain amount of cash in its bank account. Assessing Officer made an addition on account of total

deposits including cash deposits with respect to sale of land and advance received. Commissioner (Appeals) refused to admit appeal for hearing for non-payment of advance tax as per provisions of section 249(4)(b). On appeal, the Tribunal held that the assessee had filed documentary evidence before the Assessing Officer demonstrating that he had no taxable income for the year under appeal. His income consisted solely of agricultural income and receipts from the sale proceeds of agricultural land, which is exempt income under the Act. Therefore, there was no obligation to pay advance tax under section 208. Tribunal held that the Commissioner (Appeals) should have admitted appeal for adjudication on merits, and amount of advance tax payable by assessee for purpose of presenting appeal, as per provisions of section 249(4)(b), should be taken as nil. (AY. 2015-16)
Balwinder Singh. v. ITO (2024) 207 ITD 400 (Amritsar) (Trib.)

S. 249: Appeal -Commissioner (Appeals) -Form of appeal and limitation –Appeal filed before wrong forum -Delay of 657 days in filing an appeal -Form No 35 was filed before the AO instead of CIT(A) -Delay is condoned -Assessee is directed to deposit Rs. 5,000 to Prime Minister National Relief Fund within thirty days -CIT(A) is directed to decide the appeal on merits. [S. 249(3), 250, 253(3), 254(1)] 2541
Tribunal held that the Assessee having filed the appeal in Form No. 35 in the office of the ITO by mistake instead of filing the same before the CIT(A), and the CIT(A) having dismissed the belated appeal filed by the assessee without making any enquiry, the delay in filing the appeal before the CIT(A) is condoned subject to assessee depositing Rs. 5,000 to Prime Minister National Relief Fund within thirty days. CIT(A) is directed to decide the appeal on its merits in accordance with law. (AY. 2014-15)
Krishna Gopal Raneja v. ITO (2024) 232 TTJ 1 (UO) (Jodhpur) (Trib)

S. 250: Appeal -Commissioner (Appeals) -Procedure -Assessment against dead person -Legal heirs -No notice was served on the legal heirs -Order is set aside -CIT(A) is directed to hear the appeal a fresh. [S. 143(3), 159, Art. 226] 2542
An assessment order was passed against deceased assessee even when petitioner-legal heir of assessee had filed death certificate of deceased assessee, and further, there was no document to show that any notices were tried to be served on petitioner and returned back unserved with a noting that assessee was no more. On writ the High Court set aside the order passed against deceased and CIT(A) is directed to hear the appeal a fresh after issuing a proper notice as per law. (AY. 2018-19)
Sitaram Raikwar v. NFAC (2024) 301 Taxman 528 (MP)(HC)

S. 250: Appeal -Commissioner (Appeals) -Multiple e-mail ids-Opportunity of being heard -Notices were sent via email-Responded by the assessee -Communications to the assessee were not sent at the addresses indicated in the appeal memorandum -Order of single judge dismissing the petition is set aside -CIT(A) is directed to issue a fresh notice of hearing at correct email address and thereafter pass the orders in the appeal -Strictures -Department is advised to evolve a procedure whereby e-mail ids furnished by the assessees are regularly updated after confirmation with the assessee, so that at any given point in time, an assessee can only insist upon a maximum of three e-mail ids to which communications intended for him may be addressed. [S. 254(1) Art. 226] 2543

The CIT(A) passed the ex parte order on the ground that when the assessee himself has given multiple e-mail ids and assessee has responded to the notice issued on its latest e-mail id on which several communications for hearing of the appeal were issued. On writ the single judge held that the opportunity of hearing was given, hence, the writ petition was dismissed. On appeal the Court held that notices to the assessee were not sent at the addresses indicated in the appeal memorandum. Therefore, the appellate orders are set aside and the appellate authority is directed to issue a fresh notice of hearing in respect of the appeals at the correct e-mail address and thereafter, pass final orders in the appeal after hearing the assessee or his Authorised Representatives in the matter. Department is advised to evolve a procedure whereby e-mail ids furnished by the assessees are regularly updated after confirmation with the assessee, so that at any given point in time, an assessee can only insist upon a maximum of three e-mail ids to which communications intended for him may be addressed. (AY-2011-12 to 2014-15)
Sham Basheer v. CIT (A) (2024) 340 CTR 739 / 240 DTR 217 (Ker.) (HC)
Editorial: Sham Basheer v. CIT (A) (2024) 340 CTR 742 / 240 DTR 219 (Ker.) (HC) is set aside.

2544 **S. 250: Appeal -Commissioner (Appeals) -Multiple e-mail ids-Opportunity of being heard -Primary and email id -Notices were sent via email -Responded by the assessee -Opportunity of hearing was given -Writ petition is dismissed. [S. 254(1) Art. 226]**
Dismissing the petition the court held that when the assessee himself has given multiple e-mail ids and assessee has responded to the notice issued on its latest e-mail id on which several communications for hearing of the appeal were issued, it cannot be held that the assessee was not afforded opportunity of hearing by the appellate authority before passing the impugned orders. Court held that the petitioner may file an appeal before the Tribunal, if so advised. (AY-2011-12 to 2014-15) (SJ)
Sham Basheer v. CIT (A) (2024) 340 CTR 742 / 240 DTR 219 (Ker.) (HC)
Editorial: Order of single judge is set aside, Sham Basheer v. CIT (A) (2024) 340 CTR 739 / 240 DTR 217 (Ker.) (HC)

2545 **S. 250: Appeal -Commissioner (Appeals)-Non-speaking order-Procedure Cash credits -Unsecured loan from Magunta exports -Return showing nil income –Duty of CIT(A) -Duty to give reasons for order -Conclusions were in the nature of ipse dixit and no supporting reasons were discernible -Order of CIT(A) confirming the addition is set aside -Matter remanded to the file of the CIT(A). [S. 68, 115BBE, 250, Art. 226]**
Assessing Officer made addition under section 68 in respect of loans received from Magunta exports on the ground that lender has filed nil return. On appeal the CIT(A) accepted all conclusions of Assessing Officer and rejected appeal. On writ the Court held that since there was nothing to indicate that appellate authority independently applied its mind while drawing conclusions, impugned order was to be set aside and matter was to be remanded back to appellate authority for disposal afresh. Court also held that the conclusions were in the nature of ipse dixit and no supporting reasons were discernible. (AY. 2020-21) (SJ)
Sohan Raj Khanted Guvanthraj v. CIT (Appeals), NFAC, New Delhi (2024) 297 Taxman 143/337 CTR 978 /467 ITR 547 /236 DTR 281 (Mad.) (HC)

S. 250: Appeal -Commissioner (Appeals) -Procedure -No power to dismiss the appeal on account of non-prosecution -Order of CIT(A) is set aside to decide on merits. [S. 250(6), 251] 2546

Held that section 250(6) of the Act, obligates the CIT(A) to state point for determination in appeal before him, the decision thereon and the reasons for determination. CIT(A) has no power to dismiss appeal of assessee on account of non-prosecution and without deciding on merits of the case. The matter is restored to the file of the CIT(A) to decide on merits. (AY. 2015-16) (ITA No. 28/ Ranchi /2024 dt. 13-8-2024)

Maa Chintpurni Mining Pvt Ltd v. ITO(2024) BCAJ-September-61 (Ranchi) (Trib)

Avdesh Jain v. ITO (2024) 167 taxmann.com 730 (Raipur)(Trib)

S. 250: Appeal -Commissioner (Appeals) -Procedure -Intimation -Rectification -No power to give direction or finding in respect of issues which are not subject before him. [S. 143(1), 154, 249] 2547

Tribunal held that the CIT(A) does not have the power to adjudicate the issue considered by the AO in the order passed u/s 154, while deciding the appeal filed by the assessee against the order passed by the AO under section 143(1) of the Act. (AY. 2019-20, 2020-21)

Church Educational Society v. ACIT (2024) 232 TTJ 553 / 244 DTR 193 / 38 NYPTTJ 1419 (Hyd.) (Trib)

Aurora Educational Society v. ACIT (2024) 232 TTJ 553 / 244 DTR 193 / 38 NYPTTJ 1419 (Hyd.) (Trib)

Karshak Vidya Parisad v. ACIT (2024) 232 TTJ 553 / 244 DTR 193 / 38 NYPTTJ 1419 (Hyd.) (Trib)

S. 250: Appeal -Commissioner (Appeals) -Procedure -Territorial jurisdiction of CIT(A) -Appeal filed before non-jurisdictional CIT(A) -Order by the CIT(A) CIT(A), Noida is set aside and the matter is remanded to the CIT(A), Ghaziabad to adjudicate the appeal afresh in accordance with law. [S. 246A] 2548

Revenue challenged the order passed by the CIT (A) Noida on the ground that he has no jurisdiction to pass the order as the jurisdiction was with CIT(A) Ghaziabad. Allowing the appeal of the Revenue the Tribunal held that as per the CBDT Notification No. 66 of 2014, dt. 13th Nov., 2014 read with Order No. G-03/2014-15, dt. 15th Nov., 2014 of the Principal Chief CIT (CCA), Kanpur, the jurisdiction for hearing the first appeal, in the present case, lies with CIT(A) at Ghaziabad. However, the assessee opted to file appeal before the CIT(A) at Noida. Contrary to the above notification and the order, the CIT(A) at Noida, passed the impugned order without there being jurisdiction to do so. On appeal by the Revenue, the Tribunal held that an order passed by a Court or Tribunal or authority having no jurisdiction is nullity and that its invalidity could be set up whenever and wherever it is sought to be enforced or relied upon. Circular No. 3 of 2018, dt. 11th July, 2018 issued by the CBDT is applicable only when the Revenue authority passes the order having proper jurisdiction. Said circular is not applicable to the cases where the authority passes the order by exercising wrong jurisdiction. The order passed by the CIT(A), Noida is set aside and the matter is remanded to the CIT(A), Ghaziabad to adjudicate the appeal afresh in accordance with law. (AY. 2015-16)

ITO v. Shalini Gupta (2024) 230 TTJ 403 / 239 DTR 123 / 38 NYPTTJ 657 (Delhi) (Trib)

2549 **S. 250: Appeal -Commissioner (Appeals) –Dismissal of appeal -Ex parte order -CIT(A) is directed to decide the appeal on merits. [S. 246A]**
Held that the CIT(A) has decided Ex parte order, without deciding on merits. CIT(A) is directed to decide the appeal on merits. (AY. 2008-09 2010-11 to 2013-14)
ITO v. K. Murugan (2024) 227 TTJ 121 / 233 DTR 72 (Chennai) (Trib)

2550 **S. 250: Appeal -Commissioner (Appeals) -Procedure -Capital gains -Non speaking order of four lines -Order of CIT(A) is set aside. [S. 45, 133(6) 147, 148, 246A]**
Held that the Commissioner (Appeals) has passed a four-line ex parte order upholding the additions. Tribunal set aside the order to the file of the CIT(A) to decide on merits. (AY. 2012-13)
Balveer Singh v. ITO (2024)116 ITR 633 / [2025] 172 taxmann.com 82 (Jaipur) (Trib)

2551 **S. 250: Appeal -Commissioner (Appeals) -Procedure -Dismissed the appeal without deciding the issue on merits -Matter remanded to the CIT(A) for fresh decision after allowing a reasonable opportunity of hearing. [S. 246A]**
Commissioner (Appeals) dismissed the appeal without deciding the issues on merits for not appearing by the assessee on various opportunities. The Tribunal remanded the matter to the file of CIT(A) for fresh decision after allowing a reasonable opportunity of hearing. (AY. 2010-11)
Alpha Chemie Trade Agencies P. Ltd. v. CIT (Appeals) (2024)116 ITR 20 (SN)/ 168 taxmann.com 257 (Mum.) (Trib)

2552 **S. 250: Appeal -Commissioner (Appeals) –Powers -Dismissing the appeal without deciding on merits -Transfer price -Comparable -Exempt income -Matter remitted to Commissioner (Appeals) for fresh consideration. [S. 14A, 92C 92CA, 115BBD, R. 8D]**
CIT(A) dismissed the appeal without deciding on merits. Hence, all issues are remitted to Commissioner (Appeals) for fresh consideration. (AY. 2012-13, 2013-14)
Computer Sciences Corporation India P. Ltd. v. Dy. CIT (2024)114 ITR 237 (Hyd.) (Trib)

2553 **S. 250: Appeal -Commissioner (Appeals) -Procedure -Ex-parte order -Commissioner (Appeals) is bound to adjudicate appeal on merits in accordance with law by speaking order recording reasons. [S. 69A, 250(6)]**
Tribunal held that Commissioner (Appeals) is bound to adjudicate appeal on merits in accordance with law by speaking order recording reasons. Matter remanded to Commissioner (Appeals). (AY. 2011-12)
Brijeshkumar Jayantibhai Patel v. ITO (2024) 114 ITR 1 (SN)(Ahd.) (Trib)

2554 **S. 250: Appeal -Commissioner (Appeals) -Procedure -Unexplained investments -Unexplained money -Cash credits -Affidavit -Addition is deleted -Delay in filing the appeal is condoned -Commissioner (Appeals) does not have power to dismiss appeal for non-prosecution. [S. 68, 69A, 115BBE, 250]**
Held that the Commissioner (Appeals) had failed to adjudicate the grounds of appeal raised by the assessee and had merely dismissed the appeal. The order of the Commissioner (Appeals) was set aside for de novo adjudication after giving opportunity to the assessee. (AY. 2014-15)
Meda Raja Kishor Raghuramy Reddy v. ACIT (2024)113 ITR 258 (Panaji)(Trib)

S. 250: Appeal -Commissioner (Appeals) -Procedure -Unexplained money -Commissioner (Appeals) -Natural Justice -Remand report not received -Commissioner (Appeals) ought to have waited for remand report and taken steps to expedite submission -Order of Commissioner (Appeals) is set aside and matter remanded to Assessing Officer. [S. 69A, R. 46A(1)] 2555

Held that that certain information and documents had been requisitioned by the Assessing Officer from the assessee for the purpose of enquiry and submission of remand report to the Commissioner (Appeals) and the assessee had submitted a reply to the notices along with certain evidence. In this situation, once the Commissioner (Appeals) had opted to seek a remand report in respect of the documents submitted by way of additional evidence, he should have waited for the report, instead of disposing of the appeals without the report. The remand report was necessary for adjudication of the subject matter of the appeals. Since, no step was taken for early submission of the report for just adjudication of the appeals, the Commissioner (Appeals) could be said to have proceeded in violation of principles of natural justice. The orders passed by the Commissioner (Appeals) are set aside, and the matters are restored. (AY. 2017-18, 2018-19)

Madan Lal Sharma v. ITO (2024)113 ITR 42 (SN)(Jaipur)(Trib)

S. 250: Appeal -Commissioner (Appeals) -Procedure -Ex-parte order -Method of accounting -Construction work -Rejection of books of account -AO estimated net profit at rate of 4 per cent of total contractual receipts as against 1 per cent -CIT(A) dismissed the appeal ex parte -Matter is remanded back to Commissioner (Appeals) to decide issue on merits. [S. 145] 2556

Assessee, a joint venture, was formed for purpose to bid and execute construction work. It declared net profit at rate of 1 per cent of contractual receipts. Assessing rejected book results and estimated net profits at rate of 4 per cent of total contractual receipts. Commissioner (Appeals) dismissed appeal on ground that assessee did not pursue its appeal before him. Tribunal remanded back to CIT(A) to decide on merits. AY. 2017-18)

Gammon-SPSCPL JV. v. ACIT (2024) 209 ITD 400 (Mum.) (Trib.)

S. 250: Appeal -Commissioner (Appeals) -Procedure -Grounds of appeal -Deciding altogether different grounds of appeal which were not there in memorandum of appeal in Form No. 35 and allowing Appeal of assessee -Order set aside and direction to Commissioner (Appeals) to look into facts and pass an order on merits after giving proper opportunity of hearing. [S. 68, 133(6), 246A, Form No. 35] 2557

Allowing the appeal of the Revenue the Tribunal held that the order of the Commissioner (Appeals) is devoid of any facts related to the appeal. The Commissioner (Appeals) had decided altogether different grounds of appeal which were not there in the appeal memo in form no. 35 before him, but had taken grounds of appeal which were not at all the issues in appeal and allowed the appeal of the assessee. Each of the grounds of appeal raised by the Assessing Officer was emphatic, clear and forthright. All the grounds of appeal were appropriate and in guarded words to set aside the appellate order passed by the National Faceless Appellate Authority in a most casual manner. The order of the Commissioner (Appeals) was passed without application of mind,

was devoid of any merit, unsustainable and perverse. The Commissioner (Appeals) is directed to look into the facts and pass an order on the merits of the case, after giving proper opportunity of hearing to the assessee. (AY. 2014-15)
Asst. CIT v. Deepak Chanderbhan Sudhija (2024)112 ITR 63 (SN)(Mum.) (Trib)

2558 **S. 250: Appeal -Commissioner (Appeals) -Procedure -Duty to state point for determination, his decision thereon and clear reasons therefore -Transfer pricing -International transactions -Arm's length price -Not analysing quid pro quo from evidence brought on record and recording independent findings thereon -Order is set aside and matter remanded to CIT(A) for passing speaking order. [S. 92CA(3), 250(6), 251(1)(a)]**
Held that clause (a) of sub-section (1) of section 251 of the Income-tax Act, 1961 obligates the Commissioner (Appeals) to adjudicate the issue either by confirming or annulling the addition or reducing or enhancing the addition made by the Assessing Officer without the right to remand the matter back. However, while exercising the jurisdiction under section 251(1)(a) of the Act, the Commissioner (Appeals) is required to state point of determination, his decision thereon and clear reasons therefor in terms of section 250(6) of the Act. This exercise by the Commissioner (Appeals) is a prerequisite and invariably necessary for each assessment year in each case irrespective of repetition. This is because in taxation each assessment year per se is a separate unit which is governed by its own peculiar facts and the principle of res judicata is inapplicable in fiscal laws. Therefore, any adjudication in taxation is final utterly for the year of adjudication only and it does not govern any later or subsequent year. The matter is remanded to the file of CIT(A) to pass a speaking order in terms of section 250(6). Referred Chandra *Kishore Jha v. Mahavir Prasasd (1999) 8 SCC 266.* (AY. 2012-13)
Dy. CIT v. Grupo Antolin India P. Ltd. (2024)111 ITR 85 (SN)(Pune) (Trib)

2559 **S. 250: Appeal -Commissioner (Appeals) -Procedure -Ex-parte order -Duty of Commissioner (Appeals) to decide merits of each point arising in appeal -Matter remanded to Commissioner (Appeals) for adjudication afresh on merits after giving assessee opportunity of hearing. [S. 250(4) 250(6)]**
The orders passed by the Commissioner (Appeals) were in contravention of the provisions of section 250(6) of the Act. The Commissioner (Appeals) had erred in facts and in law in summarily dismissing the assessee's appeals for the assessment years under consideration, by passing a non-speaking order, without mentioning the various grounds of appeal raised by the assessee in his appellate order and without discussing the merits of the case. Therefore, in the interests of justice, the cases were to be remanded to the Commissioner (Appeals) for fresh adjudication on the merits, for both the assessment years, after giving due opportunity of hearing to the assessee to present his case on the merits. (AY. 2012-13, 2015-16)
Babubhai Ramanbhai Patel v. Dy. CIT (2024)110 ITR 39 (SN)(Ahd.) (Trib)

S. 250: Appeal -Commissioner (Appeals) -Procedure -Not adjudicated on merits -Filed written submissions -Order is set aside and grounds restored to him for decision on merits, after affording adequate opportunity of being heard -Appeal filed before Bangalore bench -Time spent in filing appeal before Bangalore Bench is to be excluded -Delay in filing appeal is condoned. [S. 254(1)), Limitation Act, 1963, S. 5] 2560

Held that the assessee had filed the appeal within time before the Bangalore Bench of the Tribunal and that appeal having been dismissed for want of jurisdiction, the time spent by filing an appeal before the Bangalore Bench which had no jurisdiction deserved to be condoned in terms of section 5 of the Limitation Act, 1963. Therefore, the delay was to be condoned and the appeal admitted for adjudication. Tribunal also held that issues were not adjudicated on the merits. However, looking to the submissions of the assessee, the assessee had filed written submissions before the Commissioner (Appeals) to which he ought to have adverted and decided after considering. Therefore, the order was to be set aside and the grounds restored to the Commissioner (Appeals) for decision on the merits, in accordance with law, after affording the assessee adequate opportunity of being heard. (AY. 2016-17)

Global Green Company Ltd. v. Asst. CIT (2024)110 ITR 29 (SN) (Delhi) (Trib)

S. 250: Appeal-Commissioner (Appeals)-Procedure-Best judgement assessment-Dismissed ex-parte-Matter restored to Assessing Officer for assessment afresh. [S. 144, 147, Form No 26AS.] 2561

Held that the assessee had adduced reasonable cause for not appearing before the Assessing Officer and the Commissioner (Appeals), demonstrating the difficult circumstances preventing it from doing so, on account of the demise of the Karta of the Hindu undivided family and the financial turmoil which followed. Further, taking note of the fact that the assessee was now able to produce necessary details by way of form no. 26AS for determining the correct interest income earned by it as also bank statements for explaining the deposits added by the Assessing Officer to the income of the assessee, in the interests of justice the matter is restored to Assessing Officer for assessment afresh. (AY. 2012-13)

Karia Hareshbhai Bhagwandas, HUF v. ITO (2024)110 ITR 78 (SN) (Ahd.) (Trib)

S. 250: Appeal-Commissioner (Appeals)-Service of notice-Procedure-Ex parte order-Notice is not issued to email address provided by assessee in Form no. 35 or on email address provided in profile information-Order of CIT(A) is set aside and matter remanded back to adjudicate appeal afresh. [Form No. 35] 2562

CIT(A) passed the ex-parte order. On appeal the assessee contended that during appellate proceedings, Commissioner (Appeals) had not issued notice to e-mail address provided by assessee in Form no. 35 or on e-mail address provided in profile information but notice was sent to e-mail of former CA provided. Commissioner (Appeals) had passed an order ex parte qua assessee. On appeal the Tribunal held that notice by Commissioner (Appeals) on e-mail address other than e-mail address given in Form 35 of appeal tantamounted to issue of notice on wrong and invalid address and as such no service of notice. Therefore, matter is remanded back to Commissioner (Appeals) to adjudicate appeal afresh after granting sufficient opportunity of being heard. (AY. 2012-13, 2015-16, 2016-17)

Farhan Majid Dar. v. ITO (2024) 207 ITD 430 (Amritsar) (Trib.)

2563 **S. 250: Appeal-Commissioner (Appeals)-Procedure-Erroneously decided appeal based on facts and grounds of different case-Order of CIT(A) is set aside [S. 56(2)(vii)(b), 147, 250(6)]**

Assessing Officer made addition of a sum under section 56(2)(vii)(b) for undervaluation of property and a sum as unexplained deposits. Commissioner (Appeals) dismissed assessee's appeal. On appeal the Tribunal held that since Commissioner (Appeals) had dismissed appeal of assessee on facts and grounds of appeal of some other case and not on facts and grounds of assessee's case, order of Commissioner (Appeals) is liable to be set aside at threshold because it had not been passed as per mandate of section 250(6). Matter is remitted back to Commissioner (Appeals) for fresh adjudication. (AY. 2014-15)

Bijesh Kabra. v. ITD (2024) 207 ITD 549/115 ITR 8 (SN) (Surat) (Trib)

2564 **S. 250: Appeal-Commissioner (Appeals)-Procedure-Additional Evidence-Remand report-Failure to discuss-Possible human error-Matter remanded for de novo adjudication. [S. 144]**

Held that since, for the first time, the Central Board of Direct Taxes had introduced the Faceless Appeal Scheme for adjudication by the Commissioner (Appeals), it was possible that in the transition, the Commissioner (Appeals) (National Faceless Appeal Centre) had not received copies of the additional evidence filed by the assessee. As a result, the Commissioner (Appeals) (National Faceless Appeal Centre) failed to discuss the additional evidence and remand report. Therefore, it was deemed appropriate to set aside the order of the Commissioner (Appeals) (National Faceless Appeal Centre) and remand it to the Commissioner (Appeals) for de novo adjudication. The Commissioner (Appeals) shall consider the additional evidence filed by the assessee and also the remand report. The Commissioner (Appeals) shall also provide an opportunity to the assessee, who shall be at liberty to file necessary documents before the Commissioner (Appeals). (AY. 2009-10)

Rohit Yadav v. Asst. CIT (2024)109 ITR 431 (Jodhpur) (Trib)

2565 **S. 250: Appeal-Commissioner (Appeals)-Procedure-Ex-parte order-Order is set aside-Appellate Tribunal-Delay of 2 days-Delay in filing the appeal is condoned. [S. 68, 254(1)]**

Tribunal condoned the delay of two days in filing of appeal before the Tribunal. As regards the ex parte order due to non-compliance with issued notices and failure to furnish documentary evidence, in the interest of justice, the matter is remanded to the file of the CIT(A) to decide the issue in accordance with law on merit by giving a reasonable opportunity of hearing. (AY. 2011-12, 2016-17)

Shiv Edibles Ltd. v. Asst. CIT (2024)109 ITR 612 (Jaipur)(Trib)

2566 **S. 250: Appeal-Commissioner (Appeals)-Dismissal of appeal-Remedy under Vivad Se Vishwas Scheme sought against other orders-Appeal restored to Commissioner (Appeals) for disposal of appeal on merits-Appeals not served on registered address-Delay in filing of appeal is condoned. [S. 92CA, 254(1)]**

Held that the assessee had not opted for the Direct Tax Vivad se Vishwas Scheme, 2020 in respect of the orders passed under section 201(1A) of the Act but in respect of the assessment orders passed under section 143(3) read with section 92CA of the Act

for the assessment years 2013-14, 2014-15 and 2015-16. The Commissioner (Appeals) had committed an error in dismissing the appeal filed by the assessee by recording an erroneous finding. Therefore, the issues involved in the appeals were restored to the file of the Commissioner (Appeals) with direction to decide them afresh in accordance with law after hearing the assessee. Tribunal also held that the orders in question were not served at the registered address of the assessee and the assessee came to know about the passing of the orders only on July 13, 2023 when the assessee perused the Income-tax portal. Therefore, the delay in filing the appeals is to be condoned. (AY. 2013-14, 2014-15, 2015-16)
Refop India Co. v. Asst. (2024)109 ITR 95 (SN) (Delhi) (Trib)

S. 250: Appeal-Commissioner (Appeals)-Procedure-Penalty-Appeal dismissed ex-parte-Matter remanded to the file of CIT(A) to grant one more opportunity of hearing and decide on merits. [S. 270A] 2567
Held, that considering the totality of the facts of the case and in the interests of justice it was proper to restore the issue to the Commissioner (Appeals) with a direction to grant one final opportunity to the assessee to substantiate its case by filing the necessary documents and decide the issue as per fact and law. The assessee is also hereby directed to participate in the appeal proceedings before the Commissioner (Appeals) by filing the requisite details without seeking any adjournment under any pretext failing which the Commissioner (Appeals) would be at liberty to pass appropriate order as per law. (AY. 2018-19)
Green Bio Tech v. ITO (2024)109 ITR 93 (SN)/ 159 taxmann.com 1573 (Hyd.) (Trib)

S. 250: Appeal-Commissioner (Appeals)-Procedure-Income from other sources-Appeal is dismissed without deciding on merits-Matter remanded to the file of CIT(A) to decide on appeal. [S. 56(2)(x)(b), 250(6)] 2568
Assessee purchased a property for Rs. 36.20 lakhs. Value of property for stamp duty purposes was Rs. 1.77 crores. Assessing Officer held that difference of Rs. 1.41 crores was to be taxed in hands of assessee under section 56(2)(x). On appeal the CIT(A) dismissed the appeal on ground that assessee did not comply with notices of hearing. On appeal the Tribunal held that since Commissioner (Appeals) did not give a detailed reason on ground of appeal raised by assessee in terms of section 250(6), matter was to be restored back to Commissioner (Appeals) with direction to assessee to submit details. (AY. 2018-19)
Rajkumar Anandchand Jain v. DCIT (2024) 205 ITD 14 (Mum.) (Trib)

S. 250: Appeal-Commissioner (Appeals)-Non-speaking order-Procedure-Commissioner (Appeals) has to decide appeal on merit by passing a speaking order and does not have any power to dismiss appeal for non-prosecution. [S. 68, 69, 131, 133(6), R. 46A] 2569
Assessee filed return of income electronically declaring income. Its case was selected for scrutiny and various notices including show cause notice were issued upon assessee, however, assessee failed to comply. Assessing Officer made additions on account of sundry creditors under section 68 and cash deposits under section 69 as unexplained investment. Further, he had also made an addition on account of difference in 26AS statement and return of income on ground that assessee failed to file details called for.

Commissioner (Appeals) upheld addition made by Assessing Officer. Tribunal held, that Assessing Officer had not taken any proactive steps as per section 133(6) or 131 to collect information directly from sundry creditors. Further, Commissioner (Appeals) failed to consider documents filed by assessee under rule 46A and had not adjudicated each and every ground raised by assessee on merits. Since Commissioner (Appeals) had not passed a speaking order for rejecting additional evidences filed by assessee and Assessing Officer having failed to carry out necessary investigations and to understand facts in totality, impugned order passed by Commissioner (Appeals) is set aside for de novo adjudication. (AY. 2014-15)
Meda Raja Kishor Raghuramy Reddy v. ACIT (2024) 205 ITD 715 /113 ITR 258 (Panaji) (Trib)

2570 **S. 250: Appeal-Commissioner (Appeals)-Procedure-Additional evidence-Capital gains-Matter remanded to the file of CIT(A) to decide a fresh after considering the additional evidence. [S. 45, 48, R. 46A]**
Assessee claimed that AO did not compute capital gains on shares in accordance with provisions of section 48 and sought to produce additional evidence before Commissioner (Appeals). Commissioner (Appeals) did not admit additional evidence as filed by assessee observing that assessee did not fulfil any of conditions specified in rule 46A. On appeal the Tribunal held that since additional evidence goes to root of dispute, matter was to be restored to Commissioner (Appeals) for deciding appeal afresh after considering additional evidence. (AY. 2012-13)
FR. Sauter AG v. ITO (2024) 204 ITD 559 (Delhi) (Trib)

2571 **S. 250: Appeal-Commissioner (Appeals)-Procedure-Ex-parte order-Principles of natural justice-Matter remanded to CIT(A). [S. 250(6)]**
Held that Commissioner (Appeals) passed ex parte order in violation of principles of natural justice, as he had not passed order as per mandate of provisions of section 250(6) i. e., he did not pass order on merit based on entire material available on record, one more opportunity should be granted to assessee to plead its case before Commissioner (Appeals). Matter is restored back to file of Commissioner (Appeals) for de novo adjudication and pass a speaking order after affording sufficient opportunity of being heard to assessee. (AY. 2012-13)
Amitkumar Dhirajlal Joshi v. ITO (2024) 209 ITD 21 (Rajkot) (Trib)

2572 **S. 251: Appeal-Commissioner (Appeals)-Powers-Enhancement-Assessment cannot be enhanced without notice to assessee-Matter is remanded back to the file of CIT(A). [S. 250, 251(2)), 260A]**
Allowing the appeal of the assessee the Court held, that notice was not issued to the assessee by the Commissioner (Appeals), as mandated by section 251(2) of the Income-tax Act, 1961, before enhancing the cash in hand from Rs. 4,13,500 to Rs. 4,66,500. The order of the Commissioner (Appeals) was not valid. Matter is remanded back to the file of CIT(A). (AY. 2007-08)
Meetu Bansal v. Dy. CIT (2024)468 ITR 271/ 151 taxmann.com 524 (Uttarakhand)(HC)

S. 251 : Appeal-Commissioner (Appeals)-Powers-Additional evidence-CIT(A) is justified in admitting the additional evidence-Appeal of Revenue is dismissed. [S. 246A, 251(1)(a), 260A, R. 46A] 2573

Dismissing the appeal of the Revenue the Court held that that the Commissioner (Appeals) had considered the aspect of additional evidence as objected to by the Assessing Officer after considering the explanation of the assessee that the assessee was an illiterate person and had studied up to fourth standard and he was not able to read in english, and therefore, the provisions of rule 46A(1) more particularly clause (b) thereof was complied with as the assessee was prevented by sufficient cause from producing the evidence which he was called upon to produce by the Assessing Officer. All such evidence were corroborative and could not have been manipulated at that stage. The Assessing Officer had the opportunity to cross verify any information during remand proceedings but he had sent the remand report in a very routine manner. The independent corroborative evidence placed on record during the remand proceedings could not be ignored. There was no discrepancy in the sundry creditors accounts which could be added to the income of the assessee and hence, the addition was deleted. The assessee being an illiterate person could not appear before the Assessing Officer and the appellate proceedings being the continuation of the assessment proceedings, the Commissioner (Appeals) had rightly permitted the assessee to produce the additional evidence in consonance with rule 46A. (AY. 2014-15)

PCIT v. Dineshbhai Jashabhai Patel (2024)467 ITR 238 / 162 Taxmann.com 438 (Guj.)(HC)

S. 251: Appeal-Commissioner (Appeals)-Powers-Setting aside of matter back to the AO-Failure to file return-best judgement assessment-No power to set aside the matter w. e. f 1st June 2001-the matter is restored back to the CIT(A) with a direction to call for a remand report from the AO and then adjudicate the matter. [S. 139, 142(1), 144] 2574

Held that with the amendment of s. 251 w. e. f. 1st June, 2001, the first appellate authority is not empowered to set aside the appeal before him; though the assessee did not furnish any return and did not comply with order notices asking her to substantiate the deposits in her bank account, the CIT(A) exceeded his powers in setting aside the matter back to the AO. Matter is restored back to the CIT(A) with a direction to call for a remand report from the AO and then adjudicate the matter. (AY. 2017-18)

Jyoti Prakash Deshmukh v. ITO (2024) 232 TTJ 314 / 244 DTR 1 / 38 NYPTTJ 1270 (Mum.) (Trib)

S. 251: Appeal-Commissioner (Appeals)-Powers-Delay of 1694 days-Appeal is dismissed-CIT(A) cannot dismiss the appeal for default expressly or by inevitable implication; appellate authority has to decide the appeal on merits-Matter remanded to the file of CIT(A) to decide on merits. [S. 250] 2575

Held that the CIT(A) cannot dismiss the appeal for default expressly or by inevitable implication; appellate authority has to decide the appeal on merits; CIT(A) having summarily dismissed the assessee's appeal for default for the reason that the assessee has not submitted petition for condonation of delay in filing the appeal, impugned order of the CIT(A) is set aside and the matter is remanded back to his file for fresh adjudication. Followed *State of Madhya Pradesh v. Pradeep Kumar (2000) 7 SCC 372,*

Southern Steel Industries v. AAC (CT) (1996) 101 STC 273 (Mad) (HC). (AY. 2016-17, 2018-19 to 2021-22)
Medavakkam Vattara Nadargalikkiya Sangam v. ITO (2024) 232 TTJ 76 (UO) (Chennai) (Trib)

2576 **S. 251: Appeal-Commissioner (Appeals)-Powers -Revision order is set aside by the Tribunal-Issue subject matter of consideration or examination by a higher authority in the rank of hierarchy, the lower authority in the rank or the authority exercising equal powers cannot sit in judgment over the order passed by the higher authorities-The powers exercised by the CIT(A) under s. 251(1) to enhance the assessment towards consideration paid for purchase of property in the hands of the assessee is beyond the scope of the powers of the CIT(A)-Investment in purchase of property-Capital contribution by partners-Addition is deleted. [S. 69, 153A, 251(1), 263]**
Tribunal held that Principal CIT revised the assessment order passed by the AO under s. 144 r/w s. 153A by exercising powers conferred under s. 263 and set aside the assessment order passed by the AO with a direction to reconsider the issue of additions made towards the consideration paid for purchase of property under s. 69. On appeal by the assessee, the Tribunal set aside the order passed by the Principal CIT. Therefore, the powers exercised by the CIT(A) under s. 251(1) to enhance the assessment towards consideration paid for purchase of property in the hands of the assessee is beyond the scope of the powers of the CIT(A). Tribunal also held that investment in purchase of property was made out from the capital contribution by the partners. Accordingly, Addition is deleted. (AY. 2014-15, 2015-16, 2017-18)
GRR Holdings v. Dy. CIT (2024) 231 TTJ 249 / 38 NYPTTJ 991 (Hyd.) (Trib)

2577 **S. 251: Appeal-Commissioner (Appeals)-Powers-co-terminus powers with that of the AO-Revaluation of asset-Assessing the income under different head-Cash credits-Capital gains-Powers exercised by the CIT(A) cannot be said to be beyond the scope of provisions of s. 251(1)-What was considered by the CIT(A) is the very same income which arose out of the revaluation of the asset held by the firm. [S. 45(4), 68]**
Tribunal held that once the first appellate authority is having the co-terminus powers with that of the AO, then the powers of the CIT(A) under s. 251(1)(a) are wide enough to consider any other issue which comes to his knowledge during the course of appellate proceedings, but such issues should be emanating either from the assessment order or from the return of income filed by the assessee. In the present case, the AO considered the increase in the capital accounts of partners on account of revaluation of the assets held by the assessee-firm under s. 68 as unexplained cash credit. The CIT(A) having noticed the fact invoked the provisions of s. 45(4). Therefore, the powers exercised by the CIT(A) cannot be said to be beyond the scope of provisions of s. 251(1). What was considered by the CIT(A) is the very same income which arose out of the revaluation of the asset held by the firm and the same has been assessed under proper provisions of section and as per facts available on record. Followed *CIT v. Shapoorji Pallonji Mistry (1962) 44 ITR 891 (SC).* (AY. 2018-19)
Shree Estates v. ITO (2024) 231 TTJ 628 / 208 ITD 287 / 38 NYPTTJ 1032 (Hyd.) (Trib)

S. 251: Appeal-Commissioner (Appeals)-Powers-Natural Justice-Not dealing on merits-Matter remanded to the CIT(A) to decide on merits. [S. 250,251(1)(a)] 2578

Order of CIT(A) dismissing the appeal without deciding the issue on merits is set aside to decide the issue on merits. (AY. 2017-18)

Raj Kumar Dua v. ITO (2024) 231 TTJ 22 (UO) (Amristsar) (Trib)

S. 251: Appeal-Commissioner (Appeals)-Powers-Enhancement-New source-Net profit-Assessing Officer has not applied his mind-Commissioner has no jurisdiction to consider and enhancement of income. [S. 80A(5), 80P, 143(3),246A] 2579

Held that the issue of net profit was not the subject of assessment, hence the Commissioner (Appeals) had no jurisdiction to consider this amount and enhance the income of the assessee. Enhancement is deleted. (AY. 2015-16)

Krushi Sadhna Vividh Karyakari Sahakari Vikas Seva Sanstha Maryadit v. ITO (2024)116 ITR 38 (SN)(Pune)(Trib)

S. 251: Appeal-Commissioner (Appeals)-Powers-Dismissing appeal without appreciating grounds on merits-Transfer Pricing-Not dealing with issues-Disallowance of expenditure-Exempt Income-Cryptic order-Matter remitted to Commissioner (Appeals) for fresh consideration. [S. 14A, 92C, 92CA, 115BBD, 154, R. 8D] 2580

Held that although the assessee's rectification application dealt with only the matter of professional fees, the Commissioner (Appeals) mistook the rectification as one moved also on two other issues relating to employees stock option plan and foreign exchange loss. The Commissioner (Appeals) dismissed the appeal on these three issues failing to appreciate the grounds raised by the assessee on the merits. That the assessee had raised many issues such as selection of comparables, erroneous computation of margins of comparable companies, computation of transfer pricing adjustment, corporate guarantee, use of single year data and benefits of +/-5 per cent. However, the Commissioner (Appeals) adjudicated only a single issue concerning the validity of the comparable. That the fact whether the dividend received by the assessee was covered under section 115BBD and whether any expenditure had been incurred for earning the dividend were required to be verified from the records of the assessee. As the Commissioner (Appeals) had not elaborately dealt with the issue in his order. Matter remanded to the file of CIT(A) for fresh consideration. (AY. 2012-13, 2013-14)

Computer Sciences Corporation India P. Ltd. v. Dy. CIT (2024)114 ITR 237 (Hyd.) (Trib)

S. 251 : Appeal-Commissioner (Appeals)-Powers-Appeal cannot be dismissed on account of non-prosecution-Order is set aside and directed to decide on merits. [S. 246A, 251(2)] 2581

CIT(A) disposed of assessee's appeal for non-prosecution and failed to apply his mind to the issues, which arose from impugned order and assailed by assessee before him. Once an appeal is preferred before CIT(A), it becomes obligatory on his part to dispose of the same on merits and it is not open for him to summarily dismiss the appeal on account of non-prosecution of the same by assessee. In fact, a perusal of section 251(1) (a) and (b), as well as 'Explanation' to section 251(2), revealed that CIT(A) remains under a statutory obligation to apply his mind to all the issues, which arises from impugned order before him. As per mandate of law, CIT(A) is not vested with any power

to summarily dismiss the appeal for non-prosecution. Hence, order of CIT(A) was set aside and matter was remanded with a direction to dispose of the same on merits after affording a reasonable opportunity of being heard to assessee. [ITA No. 82/Rpr/2024 dt. 08/04/2024] (AY. 2013-14)
Pramod Infrastructure Pvt. Ltd. v. ITO (Raipur)(Trib) (UR)

2582 **S. 251: Appeal-Commissioner (Appeals)-Powers-Assessment made without issuing the notice-No power to set aside assessment and direct Assessing Officer to reframe assessment order-Assessment order and order of CIT(A) is quashed. [S. 143(2)]**
Commissioner (Appeals) directed the Assessing Officer to proceed under section 250 of the Income-tax Act, 1961 and to reframe the assessment after complying with the prescribed procedure, on appeal, the Tribunal held that the assessment had been framed without issue of notice under section 143(2) of the Act which meant that the assessment has been framed without assuming jurisdiction making the assessment order null and void. This fact had been accepted by the first appellate authority. The Commissioner (Appeals) had set aside the assessment which he did not have the power to do. The Commissioner (Appeals) had exceeded his jurisdiction. The assessment order and the order of the Commissioner (Appeals) were quashed. (AY. 2010-11)
Vishnu Packing P. Ltd. v. Asst. CIT (2024)109 ITR 453 (Trib)(Delhi)(Trib)

2583 **S. 251: Appeal-Commissioner (Appeals)-Powers-Appeal cannot be dismissed on account of non-prosecution-Order is set aside and directed to decide on merits. [S. 246A, 251 (2)]**
CIT(A) disposed of assessee's appeal for non-prosecution and failed to apply his mind to the issues, which arose from impugned order and assailed by assessee before him. Once an appeal is preferred before CIT(A), it becomes obligatory on his part to dispose of the same on merits and it is not open for him to summarily dismiss the appeal on account of non-prosecution of the same by assessee. In fact, a perusal of section 251(1) (a) and (b), as well as 'Explanation' to section 251(2), revealed that CIT(A) remains under a statutory obligation to apply his mind to all the issues, which arise from the impugned order before him. As per mandate of law, CIT(A) is not vested with any power to summarily dismiss the appeal for non-prosecution. Hence, order of CIT(A) was set aside and matter was remanded with a direction to dispose of the same on merits after affording a reasonable opportunity of being heard to assessee. [ITA No. 82/Rpr/2024 dt. 08/04/2024] (AY. 2013-14)
Pramod Infrastructure Pvt. Ltd. v. ITO (Raipur)(Trib) (UR)

2584 **S. 251 : Appeal-Commissioner (Appeals)-Powers-Delay of 51 days condoned-Ex-parte order –Gifts-Matter is remanded to the file of CIT(A) to decide on merits. [S. 56(2)(vii)(b), 253]**
CIT (A) dismissed the appeal ex parte. On appeal the Tribunal held that there was no compliance from assessee to notices issued and served on assessee. In view principles of natural justice, matter is remitted back to file of Commissioner (Appeals) to afford the assessee another opportunity of being heard and to pass order on merits. Delay of 51 days in filing the appeal is condoned. (AY. 2014-15)
Vardhanapu Manikumari (Smt.) v. ITO (2024) 206 ITD 1 (Vishakha) (Trib.)

S. 251 : Appeal-Commissioner (Appeals)-Powers –Matter remanded to CIT(A)-New source Cash credits-Cash deposits-No enhancement notice was issued-Cannot travel beyond scope of direction given by the Tribunal-Addition is deleted. [S. 68, 69] 2585

Assessee company purchased immovable property at an auction from a bank. Assessing Officer made an addition on account of unexplained source of this investment in property. Tribunal remanded back matter to Commissioner (Appeals). Commissioner (Appeals), in the course of remand, enquired ered into another issue on basis of statement of bank account of assessee. He recorded a finding that while making repayment of an unsecured loan, there were certain repayments and also EMI of loan which were preceded by certain cash deposits and which were not explained. He made an addition on account of said cash deposits in bank account. The Commissioner (Appeals) was, satisfied with additional evidences filed during the course of appeal establishing genuineness of sources of investment in hands of assessee for purchase of property. He however travelled beyond mandate of Tribunal in first round of litigation. On appeal the Tribunal held that since Commissioner (Appeals) failed to put assessee on notice as mandated by section 251, questioned source of cash deposits in bank account and considered same as unexplained cash credits in books of account for year under consideration, impugned addition made by Commissioner (Appeals) on a new source in form of cash deposits was not sustainable. (AY. 2012-13)

Net Agri Co. (P.) Ltd. v. ITO (2024) 204 ITD 553 (Delhi) (Trib.)

S. 251: Appeal-Commissioner (Appeals)-Powers-No power to dismiss appeal for non-prosecution –CIT(A) is directed to pass speaking order on merits. [S. 92C, 92CA(2)] 2586

Held that CIT(A) does not have the power to dismissing the appeal for non-prosecution. The matter is remanded to the file of CIT(A) to pass a speaking order on merits. (AY. 2016-17)

DSI-Bridgecon India (P.) ltd. v. ACIT [2024] 205 ITD 136 (Delhi) (Trib)

S. 251: Appeal-Commissioner (Appeals)-Powers-Co-terminus with AO-Fresh claim of deduction-Allowed deduction. [S. 80C] 2587

The appellate authority has coterminous powers with that of the AO to accept the deduction which was not claimed in ITR. So, the entire claim under section 80C is eligible for deduction. Followed: *CIT, Delhi-II v. Jai Parabolic Springs Ltd [2008] 172 Taxman 258/ 306 ITR 42 (Delhi HC) Sesa Goa Ltd. v. Additional CIT, Panaji, Goa, [2020] 117 taxmann.com 548 (Bom)(HC).* Distinguished: Goetze (India) Ltd. v. CIT [2006] 284 ITR 3231 (SC) (AY. 2015-16 to AY. 2018-19)

Ajay Sharma v. Jt. CIT [2024] 109 ITR 268 (Amritsar)(Trib)

S. 253 : Appellate Tribunal-Appeals-Appeal dismissed on account of low tax effect-Audit objection accepted by AO-Miscellaneous application of Revenue to recall the order is dismissed-On writ the Court held that appeal is maintainable-Order of Tribunal is set aside. [S. 254(2), Art. 226] 2588

Tribunal dismissed the appeal of the Revenue on account of low tax effect. Revenue filed Miscellaneous application and contended that the Assessment was reopened due to Audit objection hence covered under exception provided in the Circular no 3 of 2018

dt. 11-7-2018. The Tribunal dismissed the miscellaneous application of the Revenue. On writ, the Court held that the Tribunal was not justified in rejecting the miscellaneous application of the Revenue. Order of Tribunal is set aside and directed to decide the issue in accordance with law. CBDT Circular No. 5/2017 dated 23-1-2017 and Circular No. 3/2018 dated 11-7-2018. (AY. 2010-11)
PCIT v. Hanubhai R. Sangoni (2024) 165 taxmann.com 300 (Guj)(HC)

2589 **S. 253 : Appellate Tribunal-Appeals-Suppression of production-Current year loss-Unabsorbed depreciation-Issue which does not arise out of the order of the CIT(A) cannot be raised before the Tribunal. [S. 154, 254(1), 250, 263]**
Held that the order challenged before the CIT(A) was the order passed under S. 154 pertaining to rectification of an apparent mistake, qua not allowing set off against the current year's loss and unabsorbed depreciation. Issue pertaining to the addition made by the AO on account of alleged suppression of production was raised and assailed before the CIT(A) but was not dealt with by the CIT(A) observing that the issue is barred by limitation as the same was related to assessment order dt. 30th Sept., 2016 passed under s. 143(3) r/w s. 263, which was not appealed against. Finding of CIT(A) that the issue does not emerge from the order under S. 154 which was challenged before him is sustainable. Accordingly the issue regarding addition on account of suppression of production, has no nexus with the order passed under s. 154 which was challenged before the CIT(A) and same cannot be raised before the Tribunal. Contention of the assessee that, an issue which has not emerged from the impugned order which was challenged before the CIT(A), can be taken up in an appeal before the Tribunal cannot be accepted. Accordingly, the grounds of appeal of the assessee, which are not emerging from the order under s. 154 which is the foundation of the disputes raised in the appeal before the CIT(A), is infructuous/non-maintainable.. (AY-2011-12)
Steel Abrasive Industries Ltd. v. DCIT (2023) 37 NYPTTJ 1405 / (2024) 228 TTJ 896 / 235 DTR 233 (Raipur) (Trib)

2590 **S. 253 : Appellate Tribunal-Appeals-Delay of three days is condoned-Penalty concealment of income-Ex-parte order of CIT(A) is set aside with the direction to decide on merits. [S. 253(5), 254(1), 250 271(1)(c), 274]**
Tribunal condoned the delay of three days in filing of an appeal. As the CT(A) has dismissed the appeal without deciding on merits, the matter is remanded to the file of CIT(A) to decide on merits. (AY. 2015-16)
Sri Sumeru Housing P. Ltd. v. Dy. CIT (2024)116 ITR 5 (SN) (Bang)(Trib)

2591 **S. 253 : Appellate Tribunal-Appeals-Delay of 506 days-Sufficient cause-Not diligent in pursuing issue relating to application-Delay is not condoned. [S. 12A, 253(5)]**
Held that in the absence of reasonable and satisfactory cause or even appropriate explanation for seeking condonation of delay, it is not to be condoned lightly. Condonation of delay should not be granted only on the ground that ordinarily a litigant does not stand to benefit by lodging an appeal late. The delay was therefore not condoned. However the Tribunal granted liberty to the assessee to make an application and seek appropriate relief from the Commissioner (E) in terms of Circular

No. 7 of 2024, dated April 25, 2024 issued by the Central Board of Direct Taxes. The Commissioner (E) may examine the application of the assessee to see if it was covered by the circular and decide the matter in accordance with law and the circular.
Sri Ram Mandir Katargam v. CIT (E) (2024)112 ITR 70 (SN)(Surat)(Trib)

S. 253 : Appellate Tribunal-Appeals-Penalty-Concealment-Fees payable only Rs. 500-Paid Rs. 10,000-Registry is directed to refund of Rs. 9500. [S. 253(6)(d), 254(1), 271(1)(c)] 2592
Held that section 253 of the Act prescribes the appeal fees an assessee has to remit while filing an appeal before the Tribunal. According to clause (d) of sub-section (6) of section 253 of the Act, while filing a penalty appeal before the Tribunal, the assessee need to have remitted Rs. 500 for an appeal. Therefore the Assessing Officer was to refund the excess fee paid either by way of adjustment against the outstanding demand, if any, or by way of grant of refund within a reasonable period. (AY. 2010-11)
S. Sagar Enterprise v. Dy. CIT (2024)110 ITR 68 (SN)(Mum)(Trib)

S. 253 : Appellate Tribunal- Appeals - Instructions and Circulars-Any sum received from employees-Tax effect is Rs 46, 91, 541-Appeal of Revenue is dismissed. [S. 2(24)(x), 36(1)(va), 43B, 119, 268A] 2593
Dismissing the appeal of the Revenue the Tribunal held that tax effect is only Rs 46, 91, 541 hence the appeal of Revenue is dismissed. Ref Circular No. 3 of 2018, dated 11-7 2018, (2-2018) 405 ITR 29(St) para 10(b)) Circular No. 22 of 2015, dated 17-12 2015 (2015) 379 ITR 182 (St (AY. 2020-21)
Dy. CIT v. A. P. Knit Fab (2024) 109 ITR 492 (Chd)(Trib)

S. 253 : Appellate Tribunal-Appeals-Condonation of delay of 7 years and 104 days-Lapse on part of counsel-Appeal is dismissed as time barred. [S. 119, 254(1)] 2594
Assessee filed an appeal before Tribunal along with application for condonation of delay of 7 years and 104 days in filing said appeal claiming that delay had occurred due to lapse on part of counsel accompanied by assessee's affidavit as well as supportive affidavit of counsel. Dismissing the appeal the Tribunal held that though assessee was claiming that delay in filing had occurred solely due to lapse of counsel as he neither appeared nor filed any reply but the fact was that assessee had also contributed to a large extent in the delay as assessee had filed appeals of other two years, i. e., assessment years 2011-12 and 2013-14 on 7-9-2022 and even at that stage, had not taken care to enquire and see status of present appeals. On facts, assessee did not deserve any sympathy for a whopping delay of more than 7 or 6 years and, consequently, assessee's condonation prayer is rejected and appeals were dismissed as being time-barred. (AY. 2011-12, 2013-14)
C. I. Builders (P.) Ltd. v. ACIT (2024) 206 ITD 66 (Indore) (Trib.)

S. 253 : Appellate Tribunal-Appeals-Delay of 17 days-Appeal fees was paid before due date of filing-No reasonable explanation for delay-Appeal is dismissed. [S. 254(1)] 2595
Assessee-HUF claimed deduction under section 54F. Assessing Officer as well as Commissioner (Appeals) disallowed assessee's claim. Appeal is delayed with 17 days

and sought for condonation of delay. The asseessee contended that karta is an elderly person of 72 years of age and was not well at time of filing of appeal and was under serious illness thereby helpless in signing appeal papers and filing appeal. Assessee paid fee for appeal before due date of filing of appeal. Dismissing the appeal the Tribunal held that since fee for appeal was already paid before due date of filing of appeal and assessee had failed to come forth with any plausible explanation elaborating acceptable reasons leading to delay in filing appeal, delay in filing appeal is not condoned. (AY. 2017-18)

Krishna Kumar Nathani & Sons (HUF) v. ACIT (2024) 206 ITD 480 /231 TTJ 967 (Raipur) (Trib.)

2596 **S. 253 : Appellate Tribunal-Appeals-Unexplained cash credits-Share application-Delay of 24 days-Neither affidavit nor delay is explained-Appeal is dismissed as time barred.**

Assessee-company had issued paid-up shares including share premium. Assessee did not respond to any of notices, therefore, Assessing Officer treated receipts of such money as unexplained cash credit and made an addition. Commissioner (Appeals) confirmed additions. The appeal before the Tribunal was barred by 24 days. Tribunal held that neither an affidavit of Director was filed, nor exact details were submitted as to how this delay had occurred. Accordingly the appeal is dismissed as time barred. (AY. 2012-13)

Manmohak Infrastructure (P.) Ltd. v. ITO (2024) 206 ITD 824/232 TTJ 229 (Kol) (Trib.)

2597 **S. 253 : Appellate Tribunal-Appeals-Duties –Limitation-Delay of 425 days-Tribunal rejected the prayer for condonation of delay-High Court affirmed the order of Tribunal-On SLP Honourable Supreme Court condoned the delay-It is not the length of delay that would be required to be considered while examining the plea for condonation of delay, it is the cause for delay- The Supreme Court directed the Tribunal to decide on merits. [S. 254(1), Central Administrative Tribunal, Act, 1985 S. 21]**

Honourable Supreme Court held that no litigant stands to benefit in approaching the courts belatedly. It is not the length of delay that would be required to be considered while examining the plea for condonation of delay, it is the cause for delay which has been propounded will have to be examined. If the cause for delay would fall within the four corners of "sufficient cause", irrespective of the length of delay same deserves to be condoned. However, if the cause shown is insufficient, irrespective of the period of delay, same would not be condoned. (CA No. 8435-8436 of 2024 (@ S. L. P (Civil) Nos. 2733-2734 of 2024 dt. 5-8-2024)

Mool Chandra v. UOI (SC) www.itatonline.org.

2598 **S. 253 : Appellate Tribunal-Appeals-Appeal in the name of dead person-Legal heir is not brought on record-Appeal of revenue is dismissed. [S. 254(1)]**

Assessing Officer had filed appeal in name of deceased assessee without mentioning anything about legal heir and also had not filed complete order of Commissioner (Appeals). Appeal of Revenue is dismissed. (AY. 2017-18)

DCIT v. Ranjeet Kumar Mohanlal Jain (2024) 207 ITD 126 (Mum) (Trib.)

S. 254(1) : Appellate Tribunal-Duties-Cross objection-Failure to consider cross objections-Matter remanded to Tribunal-Valuation of assets-Books of account not rejected-Assessing Officer cannot refer to Department Valuation Officer without rejecting books of account. [S. 142A(1), 143(3), 253, 260A] 2599

Held, that the assessee had specifically raised the issue that if reference to the Department Valuation Officer, without rejecting the books of account by the Assessing Officer was not permissible, whether the addition to the income of the assessee could have been made based on the report of the valuer in the cross-objection filed before the Tribunal. The Tribunal had erred in refusing to consider the grounds raised in the cross-objection on the strength of section 142A. Matter remanded to Tribunal. Court also held as regards valuation of asset, without rejecting the books of account the Assessing Officer cannot make a reference to the Department Valuation Officer. Followed *Sargam Cinema v. CIT (2010) 328 ITR 513(SC) ; (2010) 15 SCC 546* (AY. 1997-98)
Kay Flames P. Ltd. v. CIT (2024)467 ITR 520 (All)(HC)

S. 254(1) : Appellate Tribunal-Duties-Additional grounds-Depreciable assets-Capital gains-Appeal by Department-Additional grounds-Matter remanded. [S. 2(11), 45(4), 48 50(1),50A, 253, 260A] 2600

The Assessing Officer, passed an order wherein he made an addition attributed to the short-term capital gains alleged to have accrued to the assessee-firm by computing it in accordance with section 50A. The Commissioner (Appeals) found that while the Assessing Officer computed the short-term capital gains, had not factored in the addition of the building valued at Rs. 7. 4 crores, that was brought into the firm by an incoming partner, and hence the written down value as on March 31, 2012, at the end of the previous year, after allowing depreciation would be reduced and reduced the addition of short-term capital gains. In its appeal against such order, the Department raised an additional ground, which was accepted on record by the Tribunal, where under it was contended that the capital gains had to be charged under section 45(4) and that the computation methodology adopted by the Assessing Officer and the Commissioner (Appeals) was not. On appeal held that the Tribunal was right in allowing the additional ground raised by the Revenue before the second appellate forum, which were not raised either by the Assessing Officer or the Commissioner of Income-tax (Appeals) nor considered by them. The Tribunal after hearing the rival contentions had found force in the submission of the Revenue and held that the charge of short-term capital gains had to be in accordance with the provisions of section 45(4), but the Tribunal had not proceeded to determine the tax effect, if any, that would follow pursuant to its finding. The Tribunal was right in holding that the transfer of the depreciable capital assets attracted capital gains tax under section 45(4) in the absence of distribution of any capital asset among the partners following the dissolution of the assessee firm. On the facts, the charging provisions for short term capital gains under the Act, were as stipulated under section 45(4). Under section 45(4) the computation had to be in the manner prescribed under section 48, as modified by section 50(1). The Tribunal ought to have discussed the consequence of application of these provisions to the income of the assessee in its order also while disposing the appeal preferred by the Revenue, especially since the order of the Commissioner (Appeals) was in favour of the assessee. Though the finding of the Tribunal that the charge of short-term capital gains, had to

be computed as mandated in section 45(4), had been affirmed the matter was remanded back to the Tribunal, for the specific finding on the extent of short term capital gains if any to be computed and brought to tax. The Tribunal should examine the provisions of section 48, as modified by section 50(1) and would have take into account the totality of transactions effected during the previous year relevant to the assessment year 2012-13. Matter remanded. (AY. 2012-13)
PVR Tourist Home v. CIT (2024)467 ITR 256 (Ker)(HC)

2601 **S. 254(1) : Appellate Tribunal-Duties-Tribunal remanded matter back to Assessing Officer for proper verification and adjudication and decide same as per law-Failure to consider earlier order of Tribunal-Matter remanded to the Tribunal for reconsideration. [S. 14A, 260A]**
Assessing Officer while passing assessment order disallowed interest expenses of certain amount and administrative expenses of certain amount by invoking provisions of section 14A. Tribunal remanded matter back to Assessing Officer for proper verification and adjudication and to decide same as per law. On appeal the Court held that the Tribunal had not considered its decision for previous assessment years 2009-10 and 2010-11 wherein on similar facts of disallowance under section 14A, Tribunal had allowed interest expenditure to assessee and also restricted disallowance of administrative expenses only up to certain amount and such orders passed by Tribunal were also confirmed by this Court while dismissing tax appeals of revenue. Oder of Tribunal is set aside and matter was to be remanded to Tribunal to decide issue afresh. (AY. 2011-12)
Gujarat State Fertilizers and Chemicals Ltd. v. Dy. CIT (2024) 298 Taxman 488/ (2025) 475 ITR 646 (Guj.)(HC)

2602 **S. 254(1): Appellate Tribunal-Duties-Additional ground-Agricultural land-Capital asset-Tribunal deciding nature of one piece of land and not deciding with respect to other-Order of Tribunal is set aside and matter remanded. [S. 2(14), 260A]**
Held, that the additional ground raised before the Tribunal was common for both items of land. However, the Tribunal had decided only the nature of the land situated at Nadipur and not decided in respect of the Maruti Build Con land. The order was not valid. Matter remanded to the Tribunal to decide only the issue whether qua the Maruti land was an agricultural land as per the provisions of section 2(14) of the Income-tax Act, 1961. (AY. 2010-11)
Shailesh B. Patel v. ITO (2024)466 ITR 776 (Guj)(HC)

2603 **S. 254(1): Appellate Tribunal –Duties-Revision of orders prejudicial to revenue-Losses in speculation business –Tribunal quashing the order of Revision-Documents placed before the Tribunal not placed before the Commissioner-Matter remanded to the file of the Commissioner. [S. 73(1) 263]**
The AO had passed assessment order allowing the set off of derivative loss against the business income. The said order was sought to be revised by the CIT. However, in spite of giving opportunity, the assessee did not appear before the CIT. Hence, the CIT passed revisional order which was challenged before the Tribunal. The Tribunal held CIT had no jurisdiction as this aspect was examined by the AO during assessment proceedings. The Tribunal recorded argument of the advocate of the assessee that there was no bar

under the Act allowing such set off but it did not give any finding about correctness of such submission. The Revenue challenged the order of the Tribunal in further appeal. The High Court held that since the Tribunal has not given a specific finding as to how there is no bar under the Income Tax Act for setting off of derivative loss against business income in the facts and circumstances of the case, the matter has to be freshly decided by the CIT. (AY. 2017-18)
PCIT v. Manindra Mohan Mazumdar (2023) 150 taxmann.com 116 (2024) 461 ITR 56 (Cal) (HC)

S. 254(1) : Appellate Tribunal- Powers-Ex -parte order by CIT(A) – Tribunal set a side the matter to decide on merits – The assessee trying to use technical reasons – Appeal is dismissed. [S. 147, 255 (8), 263, 260A] 2604
Held that the Commissioner (Appeals) had dismissed the appeal ex parte. On further appeal, the Tribunal had ex-parte restored the issue back to the Commissioner (Appeals) and the appeal was dismissed by him for non-compliance. The Tribunal in the interest of natural justice had restored the issue to the Commissioner (Appeals) so that the assessee could be granted the opportunity to substantiate its case. This clearly showed that the assessee was not interested in showing the reconciliation but had attempted to use technical reasons to avoid the responsibility. This scathing remark of the Tribunal showed the triviality of the matter. The submissions made with regard to section 255 showed the intention of the assessee to delay the case. While scrutinizing the documents at hand, it was clear that due compliance had been made with respect to the reassessment proceedings and all the subsequent appeals Additionally, the assessee had been provided with the regular chances to submit his representation but the assessee had been delaying it. Appeal is dismissed. (AY. 2008-09)
L. A. Developers v. CIT (2024) 471 ITR 437 (Orissa) (HC)
Editorial : SLP of assessee is dismissed, L. A. Developers v. CIT (2024) 471 ITR 444 (SC)

S. 254(1) : Appellate Tribunal-Powers-Additional evidence-No application was moved-Failure to produce will during assessment proceedings-Order of Tribunal is affirmed. [R. 46A, 260A. Order 41, Rule, 27CPC] 2605
Held that no Will was produced before the AO and CIT(A), however, at the stage of appeal before the Tribunal, the assessee produced the Will which was considered by it. The Tribunal has found that there was no application moved under R. 46A and the additional evidence as well as grounds regarding the Will having been executed in favour of the assessee, could not have been considered. Provisions of the Act of 1961 are to be read as it is. No addition or subtraction can be made in the Rules of 1962 nor any principles of natural justice, where not applicable, can be applied, nor can any other provisions regarding equity be made applicable while construing the provisions of the Rules. It is an admitted position that there was a violation of R. 46A and therefore, such documents could not be taken into consideration. No reason has come forward for not placing the so-called Will during the time of assessment. (AY. 2011-12) The tribunal was right in refusing to admit the will placed before it as evidence.
Rajiv Mehra v. CIT (2024) 168 taxmann.com 273 /341 CTR 329 / 243 DTR 161 / 8 NYPCTR 1424 (P&H) (HC)

2606 **S. 254(1) : Appellate Tribunal-Powers-Ex parte order by the Tribunal-Un explained cash credits-Negligence of the Chartered Accountant to make effective representation before the Tribunal-Negligence was not attributable to assessee,-Matter is restored before Tribunal to give an opportunity of hearing-Directed deposit of costs of Rs 25000 before the Tribunal. [S. 68, 260A]**

Assessing Officer passed assessment order under making addition under section 68 of the Act. Addition is affirmed by the CIT(A). On appeal before the Tribunal the assessee engaged a Chartered Accountant to contest and to make effective representation before Tribunal. However, said Chartered Accountant remained negligent towards the statutory rights of the assessee and case of assessee could not be represented effectively. Consequently the appeal was dismissed ex parte by Tribunal. On appeal the Court held that since negligence was not attributable to assessee, another opportunity of hearing is granted and the matter is restored before Tribunal. However the assessee is Directed to deposit cost of Rs 25000 before the Tribunal. (AY. 2012-13)

Desert Infraspace (P.) Ltd. v. ITO (2024) 300 Taxman 406 (Guj.)(HC)

2607 **S. 254(1) : Appellate Tribunal –Powers-De novo enquiry-Bad debt-Where Appellate Authority remands case for a determination on a selected issue or aspect of assessment, parties are fully aware of parameters within which fresh enquiry is circumscribed and limited-Tribunal had directed Assessing Officer to consider question of disallowance for bad debts/advances being written off-Tribunal's order did not set aside or cancel subject assessment orders requiring a fresh assessment. [S. 36(1)(vii), 153(5), 153(6), Art. 226]**

On a writ the Court held that the ITAT has power to set aside Assessment Order and direct a de novo enquiry, in which case every aspect, computation and dimension is open for consideration. This partakes nature of an assessment which is akin to original assessment and, therefore, period of limitation applicable to original assessment must apply to fresh assessment. However, where Appellate Authority remands case for a determination on a selected issue or aspect of assessment, parties are fully aware of parameters within which fresh enquiry is circumscribed and limited and thus, the period of limitation did not apply to the fresh enquiry. Tribunal had directed Assessing Officer to consider question of disallowance for bad debts/advances being written off, permitting assessee to produce further documents, and directing Assessing Officer to extend an opportunity of hearing to assessee and decide matter, Tribunal's order did not set aside or cancel subject assessment orders requiring a fresh assessment. *CIT v. Shelly Products (2003) 129 Taxman 171/ 261 ITR 367 (SC) (*AY. 2007-08 to 2009-10)

United Spirits Ltd. v. ACIT (2024) 296 Taxman 141/ 464 ITR 167/ 337 CTR 826 (Karn)(HC)

2608 **S. 254(1): Appellate Tribunal-Duties-Delay of 189 days in filing an appeal before the CIT(A) is condoned. [S. 143(1), 249(3), 250]**

The AO had rejected the exemption on account of non filing of form 10BB. The tribunal found that the audit report had been filed during appellate proceedings. The assessee had also applied for condonation of delay to the CBDT. The matter had therefore to be kept alive till the CBDT decided the application of the assessee. The Tribunal condoned

the delay of 189 days in filing an appeal before CIT(A). CIT(A) is directed to decide the appeal on merits. (AY. 2019-20, 2020-21)
Church Educational Society v. ACIT (2024) 232 TTJ 553 / 244 DTR 193 (Hyd)(Trib)
Aurora Educational Society v. ACIT (2024) 232 TTJ 553 / 244 DTR 193 (Hyd)(Trib)
Karshak Vidya Parisad v. ACIT (2024) 232 TTJ 553 / 244 DTR 193 (Hyd)(Trib)

S. 254(1) : Appellate Tribunal-Powers-Pursuing wrong forum of appeal –Substantial justice-Delay is condoned-Matter is restored to CIT(A) for de novo adjudication. [S. 176(3), 189, 250(4) 250(6), 253(5) 282, Rule. 127] 2609
Tribunal held that delay which has occurred in filing this appeal with Tribunal is both on account of wrong observations and directions given by the CIT(A) as well as delays and laches on the part of the assessee.. However, it could not be said that there was a malice in the conduct of the assessee. The assessee has been pursuing legal remedy albeit at the wrong forum. Under these facts and circumstances and in the interest of justice, the delay in filing of this appeal with Tribunal needs to be condoned, but at the same time the assessee is admonished and reprimanded for its carelessness. When technicalities are pitted against substantial justice, the Courts will lean towards advancement of substantial justice, unless the mala fide on the part of the assessee is writ large. Under the facts and circumstances, there is no mala fide on the part of the assessee in filing this appeal belatedly, and in the interest of justice, the delay with respect to this appeal is condoned. Matter is restored to CIT(A) for de novo adjudication. (AY. 2008-09)
Manohars Catering v. ACIT (2024) 232 TTJ 809 / 38 NYPTTJ 1189 (Bang)(Trib)

S. 254(1): Appellate Tribunal-Powers-Cross objection-Performance guarantee-Deposit-Jurisdictional issue – Ground raised orally-Validity of reassessment-Respondent can raise the issue orally-CIT(A) deleted the addition on merits-Revenue appeal-The Respondent can raise the grounds of validity of reassessment-Rule 27 of the ITAT Rules, 1963, does not propose raising the objection in writing-The respondent is well within his right to raise the ground orally-Reassessment is quashed on change of opinion. [S. 37, 69, 147, 148, ITAT R. 1963, 27] 2610
Tribunal admitted the challenge to the validity of reassessment raised orally in the appeal filed by the Revenue against the deletion of addition on merits. Reassessment is quashed on change of opinion. The Tribunal held that the Respondent can raise the issue of validity of reassessment in an appeal filed by the Revenue. The issue can be raised by the Authorised representative orally at the time of hearing. Rule 27 of the ITAT Rules, 1963, does not require raising the objection in writing, and the assessee-respondent is well within his right to raise the same orally. Referred, *Peter Vaz v. CIT (2021) 322 CTR 121,204 DTR 376 (Bom)(HC), CIT v Dehati Co-operative Marketing-cum-Processing Society (1979) 9 CTR 32 3, (1981) 130 ITR 504 (P&H)(HC) Sanjay Sawhney v. PCIT (2020) 316 CTR 392, 192 DTR 105 (Delhi)(HC)* (AY. 2010-11)
ITO v. Bishambhar Dayal Agrawal (2024) 227 TTJ 38 (UO)/ 161 taxmann.com 1063 (Raipur) (Trib)

2611 **S. 254(1) : Appellate Tribunal-Powers-Rejection of claim in first round of litigation-The Tribunal cannot decide the claim-Power of review is not permitted. [S. 56, 80P]**
Held that when the Tribunal has decided the issue on allowability of claim against the assessee in the first round of appeal, the Tribunal cannot once again adjudicate the ground of allowability. The Tribunal has no power of review.. (AY. 2006-07)
West Bengal State Co-Operative Agriculture And Rural Development Bank Ltd. v. ACIT (2024)116 ITR 610 (Kol)(Trib)

2612 **S. 254(1): Appellate Tribunal-Additional evidence Commissioner (Appeals)-Specific request of the CIT(A) to produce invoices of particular period-No violation of Rule 46A. [S. 250, R. 46A]**
Held that the bank statements from the very beginning of the scrutiny proceedings were a necessary part of assessment records. Since the production of evidence of payments was as per directions of CIT(A),no violation of rule 46A (AY. 2016-17)
ACIT v. Ludhiana Beverages P. Ltd. (2024)114 ITR 81 (SN)(Amritsar)(Trib)

2613 **S. 254(1) : Appellate Tribunal-Powers-Delay of three to five years-Condoned-Failure to deduct tax at source-Matter is remanded to the file of Assessing Officer for fresh consideration as per law. [S. 194C]**
The assessee filed an appeal with a delay, upon which the Commissioner (Appeals) observed that the assessee had not explained the day-to-day delay and it was incumbent upon the assessee to exhibit due diligence in explaining the day-to-day delay. Accordingly the delay of over 5. 4 years and 3. 4 years in both the appeals was not condoned and the appeals were dismissed. On appeal it was contended that the assessee was situated in a remote area where there was no professional advice available, that there was also lack of staff for proper handling of Income-tax matters, that the assessee was discharging a huge task of implementing various basic amenities and day-to-day services to general public at large.. Tribunal condoned the delay and the issue is remanded to the Assessing Officer for fresh consideration and decision as per law. (AY. 2009-10, 2011-12)
Chief Officer, Town Municipal Council, Malebennuru v. ITO (TDS) (2024)113 ITR 56 (SN) (Bang) (Trib)

2614 **S. 254(1) : Appellate Tribunal-Powers-Additional evidence-Share premium-The matter is remanded back to Assessing Officer for consideration after admitting additional evidence. [S. 56(2)(viib)]**
Held that where assessee sought to file additional evidences before Commissioner (Appeals) to substantiate its claim that addition made under section 56(2)(viib) in respect of share premium received on issue of equity shares was not sustainable, but the evidence was not admitted by CIT(A). Held that the said additional evidences being crucial to disposal of issue on merits, were to be admitted and remanded back to Assessing Officer for consideration of the same. (AY. 2015-16)
ADM Agro Industries Kota & Akola (P.) Ltd. v. DCIT (2024) 208 ITD 238 (Delhi) (Trib.)

S. 254(1) : Appellate Tribunal-Powers-Revision of orders prejudicial to revenue-Condonation of delay of 2359 days-CIT directed the AO to pass fresh order following decision of Supreme Court in the case of CIT v. A. Gajapathy Naidu (1964)53 ITR 114(SC)-The AO passed order without following this direction-CIT(A) dismissed the appeal against the order of the AO on the ground that the appeal was not maintainable-Tribunal held that appeal was maintainable and considering facts of the case, condoned delay of 2359 days and restored the matter to the file of the AO. [S. 155(16), 263] 2615

The assessee had filed its return of income for A. Y. 2005-06 declaring loss of Rs. 48.82 lakhs and the same was accepted in regular assessment completed u/s. 143(3) of the Act. The assessee did not offer arbitral award of Rs. 9.90 crores as the same was contested by Government of Rajasthan and the same was considered as not taxable as award had not attained finality. The CIT issued notice u/s. 263 and passed order on 25.2.2010 holding that the arbitral award of Rs. 9.90 crores given to the Appellant was taxable income on mercantile basis and directed the AO to pass fresh order following decision of Supreme Court in the case of *CIT v. A. Gajapathy Naidu (1964)53 ITR 114(SC)*. On 26.02.2010 the AO passed order giving effect to the order passed u/s. 263 and added Rs. 9.90 crores to the income of the Appellant. The CIT(A), vide order dated 9.08.2012, dismissed appeal against assessment order holding appeal was not maintainable against order which simply gave effect to the findings of the Commissioner. The assessee filed appeal before the Tribunal on 26.03.2019 i. e. after delay of 2359 days. The assessee explained the delay pointing out that new arbitration award was passed on 8.8.2015 and the application for its execution was dismissed on 17.8.2017. The assessee had filed application u/s. 155(16) on 28.11.2018 which was dismissed by the AO on 11.3.2016. Therefore, taking into account the facts of the case and that the assessee was not negligent, proactively pursuing alternative remedy u/s. 155(16) of the Act, in the interests of justice, the Tribunal condoned the delay.

On the issue of maintainability of the appeal, the Tribunal held that the CIT(A) had dismissed the appeal on the ground that that no appeal lay against the order of the Assessing Officer which simply gave effect to the findings of the learned Commissioner of Income-tax. The Tribunal found that the CIT had not given any factual finding that the amount of arbitral award of Rs. 990 lakhs accrued as right to receive to the assessee in the impugned year. In the fact, there is no possibility of such finding in the order of the CIT since he has noted in his order that the assessee did not file copy of the arbitral award before him. The AO was required to examine the facts of the case and thereafter adjudicate upon the taxability of the arbitral award of Rs. 990 lakhs in view of the judgment of the Supreme Court in the case of *CIT v. A. Gajapathy Naidu (1964)53 ITR 114(SC)*. The Tribunal restored back the issue to the file of the AO to verify the facts of the case and pass order accordingly. (AY. 2005-06)

MSK Project (India) LV Ltd. (merged with Madhav Infra Projects Ltd.) v. ACIT (2024) 112 ITR 310 (Ahd)(Trib.)

2616 **S. 254(1) : Appellate Tribunal-Powers-Additional evidence-Admitted-Internal TNMM method-Segmental financial statement certified by independent accountant admitted as additional evidence-Additional evidence to be admitted for substantial justice. [S. 40A(2), ITAT Rule 29]**

The Tribunal allowed the admission of additional evidence submitted by the assessee,, relating to the disallowance under Section 40A(2) for excessive expenditure incurred on purchases from its associated enterprise (AE). The assessee had adopted the internal TNMM (Transaction Net Margin Method) for benchmarking the transaction and had submitted segmental financial statements during the proceedings before the Dispute Resolution Panel (DRP). The DRP rejected these statements as they were not audited. In appeal, the assessee produced certified segmental financial statement as additional evidence under Rule 29 of the ITAT Rules. The Tribunal noted that this additional evidence was crucial for proper adjudication of the issue, as it allowed for a more accurate comparison between the transactions with the AE and an unrelated party.. The Tribunal found that excluding this evidence would be unjust and admitted it, emphasizing the need for a fair determination of the arms-length price as it had a direct and important bearing to adjudicate the present controversy. (A. Y. 2013-14)

Luminous Technologies P. Ltd. v. Addl. CIT (2024) 112 ITR 76 (SN) (Delhi)(Trib.)

2617 **S. 254(1): : Appellate Tribunal-Powers-Departmental representative is not permitted to set up an altogether a new case. [S. 15, 17(3)(i)]**

The Tribunal also held that the Departmental representative is not permitted to set up an altogether a new case with respect to the applicability of section. 17(3)(iii) of the Act. Referred, *Mahindra and Mahindra Ltd v. Dy. CIT(2009) 313 ITR 263 (A. T)(Trib)*(SB) (AY. 2009-10)

ITO v. Avirook Sen (2024)111 ITR 78 (SN)/ 230 TTJ 132/ (Delhi)(Trib)

2618 **S. 254(2): Appellate Tribunal-Rectification of mistake apparent from the record-Application for recalling Tribunal's order-No rectifiable mistake apparent on the record. [Art. 136]**

The assessee filed a Miscellaneous Application (MA) under section 254(2) seeking recall of the Tribunal's order dated 09-09-2022, alleging errors in specific observations. The Tribunal held that the scope of section 254(2) is limited to correcting glaring, apparent, patent, or obvious mistakes on record and does not permit reappreciation of facts or review of findings. The reliance on *Honda Siel Power Products Ltd. v. CIT (2007)295 ITR 466(SC))* was found misplaced as it pertained to a distinct context. The Tribunal concluded that the application aimed at re-adjudicating the issues on merits rather than pointing out rectifiable mistakes and was therefore dismissed. The jurisdictional High Court and the apex court affirmed the decision delivered by the Hon'ble Tribunal.

Vijay Channabasav Suttatti v. ACIT (2024) 301 Taxman 236 (SC)

Editorial: Vijay Channabasav Suttatti v. ACIT (2024) 166 taxmann.com 384 (Bom) (HC); Vijay Channabasav Suttatti v. ACIT (2023) MA No. 014/PUN/2023, ITA No. 825/ PUN/2018 dt. 9-9-2022 (Pune)(ITAT)

S. 254(2): Appellate Tribunal-Rectification of mistake apparent from the record-Review-Statutory dues like the Provident Fund and Employees State Insurance-Payments were made before due date of filing of return-Allowed by the Tribunal-Corporation-Not deposited before due date of respective Acts-Delay of 92 days in filing miscellaneous application-Tribunal allowed the miscellaneous application of the Revenue of the basis of Subsequent Judgement of Supreme Court in Checkmate Services Private Limited v. CIT (2022) 448 ITR 518 /290 Taxman 19 (SC)-On writ against the order of the Tribunal allowing the miscellaneous application of the Revenue is quashed and set aside-Tribunal cannot review the order based on the subsequent decision of Supreme Court-Tribunal has no power to condone the delay in filing the miscellaneous application. [S. 2(24)(x),36(1)(va) 43B,139(1), Art. 226, Civil Procedure Code, 1908, Order XLVII, Rule 1] 2619

The assessing officer disallowed certain amounts in regard to the payment of the statutory dues like the Provident Fund and Employees State Insurance Corporation under Section 36(1)(va) of the Income-Tax Act, on the ground that the payments were not made within the statutory period of respective Acts,though the payments were made before due date of filing of return. CIT(A) allowed the claim on the ground that the payments were made before due date of filing of the return. Order of CIT(A) is affirmed by the Tribunal. The order of the Tribunal was dated 26th July 2022. Subsequently the Honourable Supreme Court in *Checkmate Services Pvt Ltd v. CIT (2022) 448 ITR 518 /290 Taxman 19 (SC)* held that the payment is not allowable as deduction unless the payments are made within specified dates of the Respective Acts. The order of the Supreme Court is dated 12-10-2022. The Revenue has filed Miscellaneous application before the Tribunal to rectify the order of the Tribunal based on the Judgement of Supreme Court. The miscellaneous application of the Revenue was delayed by 92 days. The Tribunal allowed the Miscellaneous application of the Revenue. The petitioner filed writ petition and contended that the Tribunal has no power to condone the delay in filing the Miscellaneous application and also the Tribunal cannot review the order based on the subsequent decision of Supreme Court. Allowing the petition the Court held that the Tribunal was in error in exercising jurisdiction under Section 254(2) and setting a side the original order. Order of the Tribunal is quashed on ground of delay as well as on merits.

Referred *Sanjay Kumar Agrawal v. State Tax Officer (1) and Another 2024) 2 Supreme Court Cases 362., Beghar Foundation v. Justice K. S. Puttaswamy [2021] 278 Taxman 1. (SC), CIT v. Income Tax Appellate Tribunal [2017] 85 taxmann.com 42 (Bom) (HC),Dy. CIT v. ANI Integrated Services Ltd [2024] 162 taxmann.com 889 /207 ITD 91 (Mum)(Trib). (WP Nos. 17175 of 2024 / 17176 of 2024/17177 of 2024 dt. 3-12-2024)* (AY. 2017-18, 2018-19, 2019-20)

Infantry Security and Facilities through, proprietor Tukaram M. Surayawanshi v. ITO (2025) 474 ITR 584 (Bom)(HC) www.itatonline.org.

S. 254(2): Appellate Tribunal-Rectification of mistake apparent from the record – Followed Orissa High Court-Not following the Jurisdictional High Court-Mistake apparent on record-Order of Tribunal is quashed-Matter is remanded back to the Tribunal. [Art. 226] 2620

Before the Tribunal the assessee has relied upon the decision of this Court in case of *Gujarat Urja Vikas Nigam Ltd. v. Dy. CIT* in Tax Appeal No. 63 of 2020 wherein, the tax

appeal was preferred by the Revenue on the aspect as to whether interest received on staff loan is business income or not for the purpose of consideration of disallowance under s. 14A. The facts of the case of *Gujarat Urja Vikas Nigam Ltd. v. Dy. CIT* and the facts of the case of the assessee are identical and not different. Tribunal relied on Orissa High Court in Odisha Power Generation Corporation Ltd v. Asst CIT (ITA Nos, 1, 2, 3 of 2015 dt. 11th March, 2022) and dismissed the appeal of the assessee. The asseesse filed miscellaneous application which was dismissed by the Tribunal. On writ the allowing the petition the Court held that the Tribunal could not have relied upon the decision of Orissa High Court while distinguishing the facts of the case of the assessee by ignoring the decision of the Jurisdictional High Court. More particularly, when the CIT and the Tribunal in case of the *Gujarat Urja Vikas Nigam Ltd. v. Dy. CIT* have held that interest income on staff loans is required to be treated as 'business income' instead of 'income from other sources' which is confirmed by this Court in the aforesaid tax appeal. In case of Gujarat Energy Transmission Corporation Ltd. in ITA No. 633 of 2013, the Coordinate Bench of the Tribunal, after considering the decision of this Court, has held that the interest on staff loans and advances are part of the 'business income' only. In such circumstances, the decision of the Coordinate Bench of the Tribunal as well as this Court were binding upon the Tribunal resulting into the mistake apparent on record. The Tribunal therefore ought to have considered such aspect while deciding the miscellaneous application under s. 254(2). Tribunal therefore ought to have considered such aspect while deciding the miscellaneous application under s. 254(2). The decision of the jurisdictional High Court is binding upon the Tribunal. In such circumstances, not following the binding decision is mistake apparent on record. Referred, *Sayaji Iron & Engineering Works (P) Ltd. v. CIT (2002) 172 CTR 339 / 253 ITR 749 (Guj)(HC), Air Conditioning Specialists (P) Ltd. v. UOI (1997) 137 CTR 211/(1996) 221 ITR 739 (Guj) (HC).* (AY. 2010-11, 2012-13 to 2014-15)

Uttar Gujarat Vij Co. Ltd. v. ITO (2024) 339 CTR 233/ 162 taxmann.com 201 (Guj) (HC)

2621 **S. 254(2): Appellate Tribunal-Rectification of mistake apparent from the record – Tribunal is not an authority-Tribunal failed to appreciate the spirit in which the order dt. 23rd Aug., 2022 was passed by the High Court-Delay is condoned-Assessment order is quashed and directed the Assessing Officer to pass the order in accordance with law. [S. 80IB(10), 119(2)(b), Art. 226]**

Assessee filed a miscellaneous application under s. 254(2) before the Tribunal seeking to recall Tribunal's order dt. 4th May, 2022 but Tribunal rejected the miscellaneous application by observing that the High Court states the IT authorities and the Tribunal is not an authority and there was no apparent mistake in its order dt. 4th May, 2022. On writ the Court held that though the view expressed by the Tribunal is correct that in the order dt. 4th May, 2022 there was no error, the Tribunal failed to appreciate the spirit in which the order dt. 23rd Aug., 2022 was passed by the High Court. Accordingly the delay had been condoned by the High Court. The High Court observed that the return for A. Y. 2011-12 had been delayed for a reasonable cause. Further the deduction for A. Y. 2010-11 to 2013-14 had been allowed. In view of these circumstances in the interest of justice the assessment order dt. 14th March, 2014 is quashed and the matter

is remanded to the stage of the AO, who shall pass fresh assessment order in accordance with law by considering the claim for deduction under s. 80-IB(10). (AY. 2011-12)
Bhatewara Associates v. ITAT (2024) 338 CTR 846 / 162 taxmann.com 834 (Bom)(HC)

S. 254(2): Appellate Tribunal-Rectification of mistake apparent from the record –Failure to apply CBDT Circular-Error which could be rectified [S. 119] 2622
Held, that on January 7, 2019 while dismissing the appeal the Tribunal had taken into consideration the circular dated July 11, 2018 but had not taken into consideration the fact that the circular was amended on August 20, 2018 and subsequently clause 10(e) had been inserted which clearly provided that if an addition was based on information received from external sources in the nature of law enforcement agencies the low tax effect would be immaterial. The assessment order passed by the assessing authority dated December 29, 2006 clearly showed that the undisclosed income belonging to the assessee was as per the investigation of Central Bureau of Investigation. Thus, the Tribunal had not committed any illegality or irregularity in allowing the miscellaneous application filed by the Department and recalling its earlier order. Circular No. 3 of 2018 dated July 11, 2018 ([2018] 405 ITR (St.) 29), (AY. 2004-05)
Ajit Pramod Kumar Jogi (Late) v. ITO (2024)466 ITR 694 /158 taxmann.com 578(Chhattisgarh)(HC)

S. 254(2): Appellate Tribunal-Rectification of mistake apparent from the record-Limitation of six months-Ex-parte hearing by ITAT and recalling Ex-parte orders-Time limit of 6 months not to apply-Order of Tribunal is set aside. [S. 253(3), ITAT R. 1963, 24, Art. 226] 2623
Assessee filed Application before Tribunal to recall Ex-Parte Order passed by ITAT as notice of hearing could not be served upon the assessee. Said application was dismissed by the Tribunal by holding that the application was barred by limitation as per time limit provided under section 254(2) of the Act. On Writ the Honourable High Court allowed the Writ of the assessee after relying on the Judgment of Delhi High Court in the case of *Cement Corporation of India Ltd v. ACIT (2023) 149 taxmann.com 192/ 456 ITR 61 (Delhi)(HC)*, by holding that when Tribunal decides a case Ex-Parte for want of prosecution on the part of the Appellant, Appellant can afterwards file an Application under Rule 24 of the ITAT Rules, and the limitation u/s. 254(2) of the Act would not apply and reliance on Section 254(2) of the Act was misplaced as the assessee never sought for rectification of the Order. Matter was remanded back to the Tribunal for fresh order.
Purnagiri Rice Mill v. UOI (2024) 296 Taxman 507 (All) (HC)

S. 254(2): Appellate Tribunal-Rectification of mistake apparent from the record-Revival of appeal-Application to withdraw appeal-Tribunal allowed withdrawal-Application for revival of appeal in terms of earlier order should be allowed-Direct Taxes Vivad Se Vishwas Scheme (DTVSV)-Form No. 3 [S. 254(1), Art. 226] 2624
During pendency of appeal, assessee applied under Direct Taxes Vivad Se Vishwas Scheme (DTVSV) and received Form-3 with a demand of Rs. 5,75,026. Tribunal, on assessee's request, permitted withdrawal of appeal, with liberty to reinstate if DTVSV

application was rejected. Assessee failed to pay demanded amount under DTVSV Scheme, citing inability. An application to recall Tribunal's withdrawal order was dismissed, stating it was not maintainable under section 254(2). On writ the Court held that though there was delay on part of assessee in approaching Tribunal, he should be afforded an opportunity to pursue his appeal, to meet ends of justice or else he would be rendered remedy less. Order of Tribunal is set aside and application under section 254(2) is ordered to be treated as an application for revival of appeal. (AY. 2013-14)
Mahesh Goud Voruganti v. ITO (2024)470 ITR 80 /158 taxmann.com 286 (Telangana) (HC)

2625 **S. 254(2): Appellate Tribunal-Rectification of mistake apparent from the record –Limited scrutiny for verification of cash deposits during demonetization period-Revision order quashed by the Tribunal-Rectification application of Revenue rejected-Order of Tribunal rejecting the rectification application is affirmed. [S. 68 69C, 115BBE,263, Art. 226]**
Assessing Officer during assessment accepted returned income based on limited scrutiny. Commissioner invoked section 263 on ground that Assessing Officer failed to conduct an inquiry by not invoking provisions of sections 68 to 69C and 115BBE and passed revisional order. Tribunal allowed appeal filed by assessee quashing and setting aside order passed by Commissioner under section 263. Revenue filed a rectification application contending that Assessing Officer did not carry out examination and therefore, as per Explanation 2 to section 263, Commissioner was justified in passing revisional order. Tribunal rejected the rectification application of the Revenue. On writ the Court held that there is no mistake apparent on record from order passed by Tribunal in appeal and revenue could not have filed rectification application on same ground when Tribunal had already considered same and thus rectification application is rightly rejected. (AY. 2017-18)
PCIT v. Green Park (2024) 301 Taxman 617 (Guj.)(HC)

2626 **S. 254(2): Appellate Tribunal-Rectification of mistake apparent from the record-Review of order is not permitted-Writ petition is dismissed. [Art. 226]**
Assessee filed an application under section 254(2) for rectification of order passed by Tribunal. Tribunal held that application under section 254(2) was in effect seeking a review of its earlier order and, thus, rejected same. Assessee filed writ petition against said order. Dismissing the petition the Court held that since application itself was in effect seeking a review of Tribunal's order, there was no error in impugned order of Tribunal.
Vijay Channabasav Suttatti v. ACIT [2024] 166 taxmann.com 384 (Bom)(HC)
Editorial : SLP of assessee is dismissed, Vijay Channabasav Suttatti v. ACIT (2024) 301 Taxman 236 (SC)

2627 **S. 254(2): Appellate Tribunal-Rectification of mistake apparent from the record –Ex-parte order-Miscellaneous application is filed after four years-Six months time limit does not apply to the ex-parte order-Miscellaneous application is allowed-Order is recalled. [ITAT R. 1963, R. 24]**
The ITAT dismissed the appeal ex-parte on 31-8-2017. Miscellaneous application was filed after a delay of 1779 days. i.e. after four years. The assessee relied on ITAT Rule

1963, R. 24 of the ITAT Rules. Department objected on the ground that miscellaneous application was filed beyond the period of six months hence barred by limitation. The Tribunal held that the limitation of six months does not apply to ex-parte order passed by the Tribunal. The Tribunal recalled the order and restored the matter for fresh hearing. Tribunal relied on *Cement Corporation of India Ltd v. ACIT (2023) 149 taxmann. com 192 / 459 ITR 61 (Delhi)(HC), PCIT v. Income-Tax Appellate Tribunal (2020) 425 ITR 581 (Bom)(HC).* (AY. 2010-11) (MA No. 407/ Mum/ 2022 dt. 8-3-2024)
Hajaram Purohit v. DCIT (2024) Chamber's Journal-April-P. 111 (Mum)(Trib)

S. 254(2): Appellate Tribunal-Rectification of mistake apparent from the record – Order of CIT(A) is without DIN-Issue did not form part of appeal –Assessee could not rectify his own lapse or mistake in miscellaneous application-Cash found and seized-Demonetized notes-Addition is made not merely on the basis of statement-Miscellaneous application is rejected-Amendment made in section 115BBE by Amending Act, 2016 prescribing higher rate of tax would apply to whole previous year 2016-17 relevant to assessment year 2017-18 even if requisition under section 132A of the Act-Miscellaneous application is rejected-Cash found with assessee was made on 14-11-2016-Cash seized by department-To be adjusted against tax liability of assessee was in nature of self-assessment payment-Adjusted while computing the interest u/s 234A. [S. 115BBE, 132A, 140A] 2628

Assessee filed miscellaneous application seeking rectification of order passed by Tribunal on ground that order of first appeal passed by Commissioner (Appeals) was without DIN and, therefore, non est as per CBDT Circular dated 14-8-2019. Assessee submitted that jurisdictional issue could be raised at any stage; therefore, it could be raised in present miscellaneous application even though it was not part of original appeal. Dismissing the petition the Tribunal held that when issue did not form part of the appeal there could not be any mistake apparent from record therefore, assessee could not rectify his own lapse or mistake in present miscellaneous application. Held that the Assessing Officer made addition on basis of cash found and seized from assessee in form of demonetized notes and not merely on basis of statement of assessee. Miscellaneous application. is rejected. Held that cash seized by department and agreed by assessee to be adjusted against tax liability of assessee, was in nature of self-assessment payment made before due date of filing of return which deserved to be allowed in computation of interest under section 234A. (AY. 2017-18)
Gaurav Ajmera v. DCIT (2024) 209 ITD 260 (Indore)(Trib.)

S. 254(2): Appellate Tribunal-Rectification of mistake apparent from the record-Subsequent judgement of Supreme Court-Order of Tribunal cannot be recalled based on subsequent judgment of Supreme Court when order of Tribunal had attained finality between parties-Deduction of payment towards employees' contribution to PF and ESIC is that same should be deposited on or before due date prescribed under PF and ESIC Acts-Rectification application of Revenue is dismissed. [S. 36(1)(va), 139(1)), Code of Civil Procedure, 1908, Order XLVII, Rule 1] 2629

The Tribunal allowed the deduction of the amount deposited on account pf employees' contribution to PF and ESIC which were paid after due date specified in PF and ESIC

Acts, but before due date of filing of return as prescribed in section. 139(1) of the Act. The Honourable Supreme Court in *Checkmate Services (P) Ltd v. CIT (2022) 448 ITR 518 (SC),* decided the controversy in favour of Revenue. Revenue has filed Miscellaneous application relying on the judgement of Supreme Court. Tribunal held that where already existing judgment of Jurisdictional High Court is not brought to notice or attention of Tribunal, then Tribunal can recall order while exercising powers under section 254(2), read with Order XLVII, rule 1 of the Code of Civil Procedure, 1908. However where order of the Tribunal cannot be recalled based on subsequent judgment of the Supreme Court when order of the Tribunal had attained finality between the parties. (AY. 2019-20)
DCIT v. ANI Integrated Services Ltd. (2024) 207 ITD 91 /231 TTJ 21/241 DTR 247 (Mum) (Trib.)

2630 **S. 254(2): Appellate Tribunal-Rectification of mistake apparent from the record-Power to recall and to pass any order-Authority letter-Authority to counsel to appear and present before Tribunal-Authority is fullest, unlimited and unrestricted and there is no rider mentioned therein, withdrawal/non-pressing of ground by counsel-Tribunal had accepted withdrawal/non-pressing without authority of counsel is devoid of any merit and is rejected. [S. 254(1)]**
In course of appellate proceedings, assessee raised a ground challenging validity of reassessment proceedings. However, same was dismissed by Tribunal as being not pressed by assessee. Assessee filed application seeking recall of Tribunal's order on ground that its Counsel had withdrawn said ground without having any authority to do so. Dismissing the application the Tribunal held that the assessee had given authority to his counsel to appear and present assessee before Tribunal. Such authority is fullest, unlimited and unrestricted and there is no rider mentioned therein. Since assessee had specifically authorized his Counsel to compound matters wherever necessary and withdrawal/non-pressing of ground by Counsel was within power and authority being representative of assessee, application filed by assessee is rejected. (AY. 2010-11)
Dhanwan Leasing and Finance Co. Ltd. v. ITO (2024) 205 ITD 259(Indore) (Trib.)

2631 **S. 254(2): Appellate Tribunal-Rectification of mistake apparent from the record – Deduction of the amount deposited on account of employees' contribution to PF and ESIC after due dates specified in PF /ESIC Acts, but before the due date filing of return as prescribed in Section 139(1) of the Act-Tribunal allowed the deduction relying on the judgement of Jurisdictional-Rectification application of the Revenue is dismissed. [S. 36(1)(va), 43B, 139(1), 254(1)]**
The Revenue filed the miscellaneous application on the ground that the issue of claim of deduction of the amount deposited on account of employees' contribution to PF and ESIC after due dates specified in PF /ESIC Acts, but before the due date filing of return as prescribed in Section 139(1) of the Act is not allowable, in view of the subsequent judgment of the Hon'ble Supreme Court in the case of *Checkmate Services P Ltd. v. CIT (2022) 143 Taxmann.com 178/ 448 ITR 518 (2023) 290 Taxman 19 (SC)* vide judgment and order dated 12/10/2022 has decided the controversy in favour of the department. The assessee contended that once the matter has attained finality, then based on

subsequent judgment of a Higher Court, cannot be the ground to recall or to review the order within the scope and ambit of Section 254(2). The Honourable Tribunal after referring the Judgement of the Apex Court in *CIT v. Reliance Telecom Ltd. (2022) 440 ITR 1 (SC)* powers u/s. 254(2) of the Income Tax are akin to Order XLVII Rule 1 CPC, then it cannot be held that scope of power u/s. 254(2) is beyond and much larger than scope of review as given in the Order XLVII Rule 1 of CPC. In fact, the scope of Section 254(2) is very limited and the scope of review is much wider. Accordingly, in view of the law laid down by the Hon'ble Constitutional Bench of the Hon'ble Supreme Court and several other judgments of Hon'ble Supreme Court held that order of the Tribunal cannot be recalled based on the subsequent judgment of the Hon'ble Supreme Court when the order of the Tribunal had attained finality between the parties. Accordingly the Miscellaneous Application filed by the department is dismissed. (AY. 2019-20)
Dy. CIT v. ANI Integrated Services Ltd. [2024] 162 taxmann.com 889 /207 ITD 91 (Mum) (Trib)

S. 254(2A): Appellate Tribunal –Stay-Cash credits-Prescribing 20 Per Cent. pre deposit of demand Income-Tax-Thirty Per Cent. of demand paid by assessee-Order of High Court is modified granting stay of recovery pending appeal to Tribunal-Tribunal is directed to decide appeal on merits without being influenced by observations of High Court. [S. 68, 220(6), Art. 136] 2632

On appeal to the Supreme Court the Court having regard to the fact that 30 per cent. of the demand had already been recovered by the Department, modified the order of the High Court, granting stay of further recovery of the outstanding dues pending disposal of the assessee's appeal before the Tribunal, and directing that the Tribunal shall consider the appeal on the merits and without being prejudiced or influenced by any of the observations of the High Court. (AY. 2021-22)
PPK Newsclick Studio Pvt. Ltd. v. Dy. CIT (2024)469 ITR 641 (SC)
Editorial : PPK Newsclick Studio Pvt. Ltd. v. Dy. CIT (2024)469 ITR 624 (Delhi)(HC) is modified.

S. 254(2A): Appellate Tribunal –Stay-Political parties-Denial of exemption-Rejection of stay by the Tribunal-Tribunal is justified in rejecting the stay application. [S. 13A(2), 226, Art. 226] 2633

Assessee, a political party, registered under section 29A of the Representation of Peoples Act, 1951 and recognised as such by the Election Commission of India claimed exemption under section 13A. Assessing Officer denied said exemption on ground that assessee had violated provisions of section 13A(2) by not filing its return of income within time prescribed under section 139(4B). Assessing Officer also held that assessee had violated section 13A(2)(d) as it had received donations in cash in excess of Rs. 2,000. An order of assessment was passed and in terms of which demand notice was issued. In meanwhile, challenging order of assessment, assessee moved Commissioner (Appeals) and more particularly moved an application for stay of recovery of demand before Assessing Officer That application came to be disposed of by Assessing Officer with a direction to assessee to deposit 20 per cent of outstanding tax liability. Assessee admittedly failed to comply with aforesaid condition as imposed by Assessing Officer.

Appeal before Commissioner (Appeals) also came to be dismissed. Thereafter, assessee filed an appeal before Tribunal. During pendency of said appeal, Assessing Officer proceeded to issue demand notices under section 226(3). Assessee moved a stay application before Tribunal in its pending appeal. Tribunal rejected stay application. Assessee not having accepted opportunity of a final hearing on appeal and there being number of adjournments which were sought at behest of assessee on different dates, Tribunal was justified in rejecting stay application. However, an amount of Rs. 65. 94 crores i. e. 48 per cent of outstanding demand having been recovered in interregnum by encashing bank drafts would merit consideration by Tribunal, in case assessee chooses to move a fresh application for stay. The Court dismissed the petition with liberty to the assessee to move fresh application for stay before the Tribunal in the light of the department having recovered an amount of Rs. 65. 94 crores. Circulars and Notifications: CBDT Office Memorandum No. 404/72/93-ITCC dated 31-7-2017 (2017) 396 ITR 55 (St) and Instruction No. 1914 dated 21-3-1996. (AY. 2018-19)
Indian National Congress v. Dy. CIT (2024) 298 Taxman 630 /463 ITR 182 /337 CTR 802 (Delhi)(HC)

2634 **S. 254(2A): Appellate Tribunal –Stay-Pendency of rectification application before DRP-Tribunal has power to extend stay even beyond period of 365 days if proceedings are delayed for reasons not attributable to assesse. [S. 144C, 254(1)]**
Held that a rectification application before DRP which had not been disposed of till date and delay in disposal of said rectification application could not be attributed to any malafide conduct of assessee, stay on recovery of demand is to be granted. The Tribunal has power to extend stay even beyond period of 365 days if proceedings are delayed for reasons not attributable to assessee. (AY. 2016-17)
Tata Cummins (P.) Ltd. v. DCIT (2024) 208 ITD 46/230 TTJ 676/240 DTR 73 (Ranchi) (Trib.)

2635 **S. 254(2A): Appellate Tribunal –Stay-Three adjournments were sought by assessee – Failure to comply with the provisions of section 13A-Stay application is rejected [S. 13A, 226, 254(1)**
Assessee, a political party, which was subjected to scrutiny assessment for relevant assessment year 2018-19 whereby addition of Rs. 199. 15 crores was made as against Nil income declared by assessee in return of income and demand of Rs. 105. 17 crores (inclusive of interest) was raised. Difference between returned and assessed income was solely because of denial of claim for section 13A exemption. Assessment order was upheld by Commissioner (Appeals) and appeal against it is pending before Tribunal. Assessee preferred a stay application citing hardship in view of forthcoming Parliamentary Elections. Tribunal held that while exercising power of stay, it is imperative for Tribunal to not only consider factors, such as, existence of a prima facie case, balance of convenience and irreparable loss/hardship but also to be circumspect; and, that stay on recovery proceedings should not be granted as a matter of course or in a routine manner. Since delay in determination of Appeal, if any, was not attributable to revenue as Assessing Officer was willing to keep recovery in abeyance requiring assessee to pay 20 per cent of disputed demand and it was assessee who had not

shown keenness to expedite hearing in its appeal before Tribunal as it sought three adjournments. Accordingly stay application is without merits and dismissed. (AY. 2018-19)
Indian National Congress All India Congress Committee v. DCIT (2024) 111 ITR 1 / 206 ITD 384/228 TTJ 529 (Delhi) (Trib.)

S. 254(2A): Appellate Tribunal –Stay-Demand is stayed on condition that the assessee would not seek an adjournment-Multiple adjournments by assessee-Stay granted against recovery of outstanding demand was vacated and assessee was to be directed to pay outstanding taxes in three equal instalments. [S. 220, 254(1)] 2636
Demands against assessee were stayed by the Tribunal on condition that assessee would not seek an adjournment without there being bona fide reason and in case assessee sought an adjournment without there being reasonable cause, stay so granted shall be withdrawn. However, on date of hearings, assessee sought repeated adjournments without reasonable cause. Tribunal vacated the stay and the was directed to pay outstanding taxes in three equal instalments. (AY. 2015-16, 2017-18)
NSE clearing Ltd. v. DCIT 204 ITD 174/229 TTJ 31 (Mum) (Trib)

S. 255 : Appellate Tribunal-Procedure-Functions-Jurisdiction-Transfer of appeals-Cash credits-Share capital and premium-Commissioner (Appeals), Kolkata deleted addition-Appeal filed by revenue before Gauhati Bench of Tribunal-Appeal is dismissed on ground of lack of jurisdiction. [S. 68, ITAT R, 1963, R. 4] 2637
Assessee company had raised share capital including share premium during year. Assessing Officer located at Kolkata passed an assessment order treating said amount of share capital including share premium as unexplained and made an addition under section 68 on account of same. Commissioner (Appeals), Kolkata deleted said addition. Revenue filed an appeal before Gauhati Bench of Tribunal. Dismissing the appeal the Tribunal held that the assessee always had its address in Kolkata. In both orders of Assessing Officer as well as Commissioner (Appeals), there was not a whisper about transfer of case of assessee from Kolkata jurisdiction to Gauhati jurisdiction by complying with provisions of Act. Appeal filed by revenue was under improper jurisdiction, owing to fact that impugned assessment order was passed by Assessing Officer at Kolkata. Accordingly the appeal is dismissed with liberty to revenue to file a fresh appeal before appropriate bench of Tribunal having jurisdiction over assessee. (AY. 2012-13)
ACIT v. Front Line Vyapar (P.) Ltd. (2024) 205 ITD 520 /230 TTJ 517 (Gauhati) (Trib.)

S. 260A: Appeal-High Court –Long term capital gains-Penny stock-Bogus claim-High Court cannot examine factual issues not raised before lower authorities-SLP of assessee is dismissed [S. 68, Art. 136] 2638
The case involved a claim for long-term capital gains from the sale of shares, which the Commissioner (Appeals) determined to be bogus after examining the factual details and the modus operandi of the transactions. This finding was upheld by the Tribunal. Subsequently, the petitioner sought to introduce new documents obtained under the Right to Information (RTI) Act for re-examination by the Tribunal or Commissioner

(Appeals). The petitioner also refererred to a Securities and Exchange Board of India (SEBI) order related to the company whose shares were traded, arguing that it could provide fresh evidence. However, the High Court, exercising jurisdiction under Section 260A of the Income-tax Act, ruled that it could not re-examine factual issues that were not raised before the lower authorities. Additionally, the Court found the reliance on the SEBI order to be misplaced, as it did not relate to the specific transactions in question. In light of these factors, the Supreme Court upheld the High Court's ruling, affirming that no substantial question of law arose and dismissing the Special Leave Petition (SLP). (AY. 2015-16)

Manoj Jain (HUF) v. ITO (2024) 301 Taxman 398 (SC)

Editorial: Manoj Jain (HUF) v. ITO [2024] 164 taxmann.com 133/299 Taxman 456 (Cal) (HC)

2639 **S. 260A : Appeal-High Court-Review petition before High Court which was dismissed as withdrawn without any liberty-SLP against order of High Court which was also dismissed –Another Review petition is also dismissed-SLP is dismissed. [Art. 136]**

Review petition before High Court which was dismissed as withdrawn without any liberty. SLP against order of High Court which was also dismissed. Assessee filed another review petition which was also dismissed. Assessee filed special leave petition. Since assessee did not seek liberty to file second review petition at initial stage or before Supreme Court, non-seeking of liberty was fatal to case of assessee. Filing of initial Review Petition and thereafter withdrawing same and pursuing Special Leave Petition and on its dismissal once again filing another Review Petition was not in accordance with policy of attaining finality in litigation. After dismissal of special leave petition by Supreme Court, assessee could not have filed another review petition before High Court as there must be an end to litigation otherwise rights of persons would be in an endless confusion and justice would suffer and, thus, SLP is dismissed. (AY. 1995-96 to 1998-99)

Garden City Education Trust v. Dy. CIT (E) (2024) 300 Taxman 594 /341 CTR 913 / 244 DTR 193 (SC)

Editorial : Garden City Education Trust v. Dy. CIT (E) (2024) 165 taxmann.com 463 (Karn)(HC), affirmed.

2640 **S. 260A : Appeal-High Court-Delay of 286 days-Order was passed by Prothonotary & Senior Master, rejecting revenue's appeal for non-removal of office objections-All notice of motions were dismissed by High Court-SLP of Revenue is dismissed. [Art 136]**

Self-operating order was passed by Prothonotary & Senior Master, rejecting revenue's appeal for non-removal of office objections. Revenue filed instant three Notices of Motion seeking condonation of delay of 286 days in seeking to set aside above self-operating order. However, it was found that affidavits-in-support of Notices of Motion were bereft of any particulars, inasmuch as, basic date of when Assessing Officer came to know of dismissal of Appeals for non-removal of office objections was even not mentioned therein. High Court held that since Affidavits-in-support were most casual and there was no explanation even attempted to be offered for delay, therefore, all Notices of Motion were to be dismissed. SLP filed by revenue is dismissed.

PCIT v. Akruti City Ltd. (2024) 298 Taxman 1 (SC)

Editorial : CIT v. Akruti City Ltd (2018) 94 taxmann.com 725 (Bom)(HC)

S. 260A : Appeal-High Court-Delay 4 years and 100 days-Failed to give any adequate or sufficient reasons-Appeal was dismissed as time barred-SLP of Revenue is dismissed. [Art. 136] 2641

Revenue filed appeal after a delay of 4 years and 100 days and cited only reason for such delay to be that there was a contrary decision of Bangalore Bench of Tribunal in its favour. High Court held that revenue failed to give any adequate or sufficient reasons to explain delay and, thus, appeal was to be dismissed as being time barred-On SLP, revenue filed an affidavit clearly stating that pursuant to order of Tribunal in *Bharti Airtel Ltd. v. ITO (TDS) [2016] 67 taxmann.com 223 (Delhi-Trib.),* a decision was taken not to file an appeal and that it was only after coming to know that Bangalore Bench had given a decision in favour of Department that as an afterthought it was decided to file an appeal in instant case. However, said explanation did not have any merit in explaining delay in filing appeal before High Court and neither could it be construed to be a sufficient cause for condoning same. Order of High Court dismissing the appeal is affirmed. (AY. 2008-09)

CIT (IT) v. Bharti Airtel Ltd. (2024) 297 Taxman 371/463 ITR 63 /337 CTR 1 (SC)

Editorial : CIT (IT) v. Bharti Airtel Ltd (2024) 159 taxmann.com 315 (Delhi)(HC)

S. 260A : Appeal-High Court-Delay of 2139 days-Lacked bona fides-Order of High Court refusing to condonation of delay-SLP dismissed. [Art. 136] 2642

High Court refused to condone the delay holding that the reasons adduced were preposterous and lacked bona fides. On a petition for special leave Court held that there was a huge delay which was not condonable.. (AY. 2010-11)

Siva Industries And Holdings Ltd. v Asst. CIT (2024) 461 ITR 142/297 Taxman 59 (SC)

Editorial : Refer, Siva Industries and Holdings Ltd. v. Asst. CIT (2023) 153 taxmann. com 354/ (2024) 461 ITR 133 (Mad)(HC)

S. 260A : Appeal-High Court-Substantial question of law-Appeal admitted by Court formulating ten questions of law-At time of final hearing Court dismissing appeal holding no question of law arises-Order of High Court set aside and matter remanded for disposal b Court on merits. [S. 234A, Art. 136] 2643

The High Court, while admitting the Department's appeal, formulated ten questions : whether the Tribunal was correct in allowing deductions in respect of interest for the preoperative period as revenue expenditure, deferred revenue expenditure relating to sponsorship of Wills World Cup, which pertained to the next year, provision of Rs. 60,61,952 in respect of cigarettes in stock claimed to be damaged, and deduction under section 80HHD of the Income-tax Act, 1961, with reference to the receipts of the approved hotel instead of proportion of the foreign exchange earnings to the profit and total turnover of the assessee, deleting disallowances in respect of travel expenses pertaining to the non-employees, proportionate interest relatable to interest-free advances to the subsidiaries, and excess price paid for purchase of tobacco from the subsidiaries at rates higher than the market price, directing that proportionate capital gains pertaining to land would be treated as long-term capital gains, allowing and holding that the self-assessment tax paid was to be deducted from the tax payable as per the assessment order for the purposes of calculating interest payable under section 234A of the Income-tax Act, 1961. When the appeal came up for final hearing, the High

Court dismissed the appeal holding that no substantial question of law arose out of the judgment rendered by the Tribunal. On appeal, allowing the appeal, that there was no option except to set aside the judgment of the High Court and remand the matter to High Court for hearing the appeal. The High Court shall now hear both the parties and decide the case on the merits. (AY. 1996-97)

CIT v. I. T. C. Ltd. (2024)461 ITR 446 /297 Taxman 533 /336 TR 745 (SC)

Editorial : CIT v. I. T. C. Ltd (2015) 64 taxmann.com 486/446 ITR 449 (Cal)(HC), set aside.

2644 **S. 260A : Appeal-High Court-Precedent-Reference decided in favour of assessee-Appeal of Revenue is dismissed-Not establishing public interest on divergence of opinion among High Courts or Just Cause-Appeal is dismissed-Business income-Interest on securities-Business income-Business expenditure-Salaries and perquisites-Disallowance is to be restricted to expenditure apportioned under profits and gains of business or profession and not under head interest on securities. [S. 18, 20(1(i), 28, 36, 37(1), 40A(5), Art. 136]**

The High Court, following its earlier order in the case of the same assessee, which in turn followed in the case of *British Bank of the Middle East v. CIT (1998) 233 ITR 251 (Bom)(HC)* held that the interest received by the assessee on the sale of securities held by it, was assessable to tax under the head Interest on securities and not under the head Income from business On appeal, Court held that since admittedly the Department had neither filed any appeal against those judgments, nor raised or pleaded any of the reasons spelt out by the court in *C. K. Gangadharan v. CIT (2008) 304 ITR 61 (SC)* nor made out just cause the appeals are dismissed. (AY. 1981-82). (AY. 1985-86, 1986-87)

CIT v Citi Bank N. A. (No. 2) (2024)469 ITR 398 (SC)

Editorial : Citi Bank N. A. v. CIT (2003) 262 ITR 47 (Bom)(HC)

CIT v. Citi Bank N. A. (No. 4) (2024)469 ITR 410 (SC)

Editorial : CIT v. Citi Bank N. A (ITR No. 349 of 1995 dt. 5-3 2003 (Bom)(HC)

2645 **S. 260A : Appeal-High Court-Reassessment-Matter is remanded to the Assessing Officer-Over due interest-Non forming asset-Question of fact-SLP is dismissed-Assessee at liberty to avail of remedy of legacy dispute resolution. [S. 36(1)(viia), 43D, 147, 148, Art. 136]**

Dismissing the appeals the Court held that the Tribunal had considered all the issues raised before it and had rendered findings which were based primarily on facts. Though references had been made of certain legal provisions, the adjudication and rendering of findings were essentially facts-centric. A comprehensive scrutiny of the proposed questions of law in three of these appeals revealed that they were generic in nature. Appeals are dismissed. SLP is dismissed. Assessee at liberty to avail of remedy of legacy dispute resolution. (AY. 2009-10, 2013-14, 2014-15)

Jila Sahakari Kendriya Bank Maryadit v. PCIT (2024)471 ITR 417 (SC)

Editorial: Jila Sahakari Kendriya Bank Maryadit v. PCIT (2024)471 ITR 413 (MP) (HC)

S. 260A : Appeal-High Court-Review petition-First review petition was dismissed, benefit of authority in case of Khoday Distilleries Ltd v. Mahadeshwara Sahakara Sakkhar Karkhane Ltd. (2019) 262 Taxman 279 (SC) would not be applicable to facts-Second review petition was also to be dismissed. 2646

Court held that petitioner had already filed a review petition in R. P. No. 31 of 2023 and the same has been dismissed as noted above. Therefore, the benefit of the authority in the case of *Khoday Distilleries Ltd. v. Mahadeshwara Sahakara Sakkare Karkhane Ltd. (2019) 262 Taxman 279 (SC)* is not applicable to the facts of this case. Hence, Review Petition is dismissed.

Garden City Education Trust v. Dy. CIT (E) (2024) 165 taxmann.com 463 (Karn)(HC)

Editorial : SLP against dismissal of review petition is dismissed, Garden City Education Trust v. Dy. CIT (E) (2024) 300 Taxman 594 (SC)

S. 260A : Appeal-High Court-Circulars-Monetary limits-Commissioner-Revision of orders prejudicial to revenue-Tax liability in revenue appeal was below Rs. 1 crore, in view of Circular No. 5/2024, dated 15-3-2024 appeal is not maintainable before High Court. [S. 263, 268A] 2647

The Principal Commissioner passed order under section 263. The Tribunal quashed the order passed by the Principal Commissioner. The Assessing Officer quantified tax liability at Rs. 32.61 lakhs. The revenue filed instant appeal on ground that the present appeal fell under the exception provided in clause 3. 1(f) of Circular No. 5/2024 dated 15-3-2024 as order passed under section 263 had been specifically mentioned in the aforesaid clause.

The assessee submitted that the appeal was covered by Circular No. 5/2024 dated 15-3-2024 that provided for limits wherein the Department could file appeal before the High Courts. She submitted that the amount prescribed therein was tax liability of Rs. 1 crore. In light of the same, she submitted that since none of the exceptions provided in clause 3.1 of the aforesaid circular were applicable, instant appeal under section 260A could not be filed by the revenue. Dismissing the appeal the Court held that upon a careful perusal of the relevant clauses of the Circular No. 5/2024, dated 15-3-2024, it appears that where the tax liability is not quantifiable or is not involved, in such cases the order passed under section 263 would fall under the exception provided in clause 3.1(f). In the present case, such is not the case and the entire issue is with regard to the tax, and quantification of the same has also been made by the Assessing Officer. As the quantum involved is below Rs. 1 crore, the appeal is covered by the said circular and is not maintainable before the High Court. The appeal filed by the revenue is not maintainable and the same is, accordingly, dismissed. (AY. 2017-18)

PCIT v. Bhupendra Sharma (HUF) (2024) 300 Taxman 615 (All.)(HC)

S. 260A : Appeal-High Court-Review-Mistake apparent-No error apparent on face of record-Decision or order cannot be reviewed merely because it is erroneous and, there was no reason to review/recall order of High Court. [S. 253(4), Rule, 47(2), Form No. 36A, Code of Civil Procedure,1908, Order 47 Rule 1] 2648

Court held that the Tribunal had categorically recorded in order that no substantial arguments had been advanced in support of cross-objection by assessee and, therefore,

appeals had been dismissed for relevant assessment year. High Court dismissed appeal. Since there was no error apparent on face of record Review petition is dismissed. Followed, *S. Bhagirathi Amaal v. Palani Roman (2009) 10 SCC 464, State of West Bengal v. Kamal Sengupta (2008) 8 SCC 612* (AY. 2012-13)
Essence Commodities (P) LTD. v. ACIT (2024) 340 CTR 705 / 238 DTR 281/ 163 Taxmann.com 473 (MP)(HC)
Editorial: Essence Commodities (P) LTD. v ACIT (2024) 340 CTR 718 / 238 DTR 294 (MP)(HC)

2649 **S. 260A : Appeal-High Court-Cross objections becoming infructuous-Appeal of Revenue dismissed-Cross objection dismissed-No substantial question of law. [S. 253(4), Rule, 47(2), Form No. 36A]**
Held that appeal of Revenue having been dismissed, the cross objection of the assessee became academic and infructuous. No substantial question of law arises from the order of the Tribunal dismissing the cross objections. Followed *Santosh Hazari v. Purushottam Tiwari (Dead) By LRs (2001) 170 CTR 160/ (2001) 3 SCC 179* (AY. 2012-13)
Essence Commodities (P) LTD. v. ACIT (2024) 340 CTR 718 / 238 DTR 294 (MP)(HC)
Editorial. Review petition is dismissed, Essence Commodities (P) Ltd. v. ACIT (2024) 340 CTR 705 / 238 DTR 281/ 163 Taxmann.com 473 (MP)(HC)

2650 **S. 260A : Appeal-High Court-Delay of 224 days-No valid explanation was mentioned in the application-Appeal is dismissed. [S. 254(1)]**
Appellant-Revenue had a right to question the order passed on 11th Oct., 2019, by filing appeal under S. 260A, within the period of 120 days prescribed under the IT Act. The said period ended on 8th Feb., 2020. Thereafter from around 15th March, 2020 the Covid Pandemic started, and in view of the same, the Supreme Court in its order dt. 10th Jan., 2022 directed that the period from 15th March, 2020 till 28th Feb., 2022 would stand excluded for the purposes of limitation as may be prescribed under any general or special laws in respect of all judicial or quasi-judicial proceedings. It further stated that if limitation had expired during the period between 15th March, 2020 till 28th Feb., 2022 notwithstanding the actual balance period of limitation remaining, all persons shall have a limitation period of 90 days from 1st March, 2022. However, in the instant case, the limitation having expired prior to 15th March, 2020 on 8th Feb., 2020 itself, the applicant cannot get the benefit of the said period of 90 days on 28th Feb., 2022. (AY. 2012-13)
PCIT v. Milestone Gears (P) Ltd. (2024) 338 CTR 959/ 162 taxmann.com 472 (HP)(HC)

2651 **S. 260A: Appeal-High Court-Assessment-Income from undisclosed sources-Deletion of addition is justified-No substantial question of law. [S. 69, 143(3)]**
Held, dismissing the appeals, that in all the appeals the question raised was regarding the deletion of amounts alleged to be undisclosed income of the assessee. The orders of the Tribunal indicated that the Tribunal had minutely examined and marshalled the facts. The proposed substantial questions of law were merely based on the findings of

fact by the Tribunal. The order of the Tribunal on the issues did not suffer from any perversity as claimed by the Revenue. (AY. 2006-07, 2007-08)
PCIT v. GTM Builder and Promoters Pvt. Ltd. (2024)466 ITR 440/163 taxmann.com 75 (Delhi)(HC)
PCIT v. Tushar Kunar (2024)466 ITR 440/163 taxmann.com 75 (Delhi)(HC)
PCIT v. Sargam Estates Pvt Ltd (2024)466 ITR 440/163 taxmann.com 75 (Delhi)(HC)

S. 260A : Appeal-High Court-Monetary limits-Dismissal of miscellaneous application-Order under section 254(2) is not appealable. [S. 10(38), 45, 254(2), 268A] 2652
Tribunal dismissed the miscellaneous application of the Revenue on the ground that original appeals were dismissed by the Tribunal on 26th Sept. 2019 on account of low tax effect and the CBDT issued special Circular No. 23 of 2019, dt. 6th Sept., 2019 and special order dt. 16th Sept., 2019 before passing the order by the Tribunal. Further, appellant had the right to prefer an appeal before this Court against the order dt. 26th Sept., 2019 passed by the Tribunal in ITA No. 205/Ctk/2019-But the order passed under s. 254(2) in the miscellaneous application is not appealable one, because, the order so passed under S. 254(2) cannot be covered under the expression every order passed in the appeal, as has been mentioned under S. 260A,thereby, the income-tax appeal is not maintainable. At best, the appellant could have taken other remedies available under the provisions of law. (AY. 2014-15)
PCIT v. Sekhar Kumar Mohapatra (2024) 336 CTR 462 (Orissa) (HC)

S. 260A : Appeal-High Court-Delay of three years-Not explained sufficient cause in delay in filing an appeal-The lack of sincerity, or rather complete absence thereof on the part of the Revenue in this case was glaringly conspicuous by its having not even filed an application seeking condonation of this colossal delay of about three years in filing these appeals-Delay is not condoned. [S. 260A(1) 260A(2)] 2653
Dismissing the appeal of the Revenue the Court held, that the lack of sincerity, or rather complete absence thereof on the part of the Revenue in this case was glaringly conspicuous by its having not even filed an application seeking condonation of this colossal delay of about three years in filing these appeals, that too despite having faced a situation where it had to withdraw the earlier appeals and was granted liberty to file afresh. The circumstances enumerated in the affidavits dated May 17, 2023 of the Revenue sounded merely an "excuse" and not an "explanation" of delay. None of the dates and stages recorded could be accepted by any stretch of imagination as disclosure of factors beyond the control of the Revenue and thereby sufficient cause which led to delay in filing the appeals. The Revenue in its affidavits dated May 17, 2023 did not even disclose the date of filing of those earlier appeals. From records of the Registry it was found that those earlier appeals were filed on February 9, 2021, i. e., much subsequent to expiry of the limitation period. Even if the covid-19 lockdown were kept in mind, it started on March 15, 2020 much later than expiry of limitation period (which expired on August 9, 2019). The Revenue had failed to disclose sufficient cause for not having filed these appeals during the period from August 9, 2019 to March 15, 2020. The delay in filing appeals is not condoned.
PCIT v. Versatile Polytech Pvt. Ltd. (2024) 464 ITR 151 (Delhi)(HC)

2654 **S. 260A: Appeal-High Court-Delay of 1560 days (4 years and 100 days)-No reason was given for delay-Appeal is dismissed. [S. 254(1]**

The Revenue filed an appeal against the order of the Tribunal after a delay of 4 years and 100 days. The Hon'ble High Court held that the Revenue has not been able to give any adequate or sufficient reasons, to explain the delay. Hence such a delay cannot be condoned. The appeal was dismissed as time barred. (AY. 2008-09)

CIT (IT) v. Bharti Airtel Ltd. [2024] 159 taxmann.com 315 / 463 ITR 56 (Delhi) (HC)

Editorial : SLP is dismissed, CIT (IT) v. Bharti Airtel Ltd [2024] 463 ITR 63(SC)

2655 **S. 260A : Appeal-High Court –Prosecution-Appeal against acquittal under code of 1973-High Court has power or jurisdiction to condone delay in filing an application seeking leave to appeal against an acquittal or in entertaining an appeal against acquittal under Code of 1973 [S. 279, Code of Criminal Procedure Code, 1973, 378, Limitation Act, 1963, S. 5, 24, Art. 14, 136, 226]**

Special leave to appeal was instituted 480 days beyond the prescribed period of limitation. The applicant filed a Criminal Miscellaneous application seeking condonation of delay. The Respondent raised the preliminary objection as regards the powers to condonation of delay. Court held that High Court has power or jurisdiction to condone delay in filing an application seeking leave to appeal against an acquittal or in entertaining an appeal against acquittal under Code of 1973. The matter remanded to the single judge to decide on merits.

ITD v. Dattaraj Vassudeva Salgaoncar (2024) 298 Taxman 778 (Bom.)(HC)

2656 **S. 260A: Appeal-High Court-Delay in filing appeal of 3270 days-Time required to clear certain objections & some time was required to arrange certain documents-Appeal dismissed. [S. 153A]**

The assessee refilled an appeal before the High Court against the Tribunal's order with a delay of 3270 days and sought condonation of delay contending that there were certain objections and to remove them some time was taken to arrange relevant documents since there was no valid explanation given for condonation of delay, impugned appeal deserved to be dismissed on account of delay.

Rajan Setia v. CIT [2024] 461 ITR 287 /162 taxmann.com 73 (P&H HC)

2657 **S. 260A: Appeal-High Court-Delay of 2139 days-Absence of sufficient cause-Delay is cannot be condoned.**

Dismissing the petition the Hon'ble court has held that the assessee was not vigilant rather negligent and there is lack of bona fide even in explaining the delay. The assessee had failed to demonstrate that there was "sufficient cause" for the delay in filing the Tax Case Appeal and thus the petition is liable to be dismissed. (AY. 2010-11)

Siva Industries and Holdings Ltd. v. Asst. CIT (2024) 461 ITR 133 (Mad)(HC)

Editorial : SLP dismissed, Siva Industries and Holdings Ltd. v. Asst. CIT (2024) 461 ITR 142/297 Taxman 59 (SC)

S. 261 : Appeal-Supreme Court-Condonation of delay of 484 days-Explanation was not satisfactory-SLP of Revenue is dismissed. [Art. 136] 2658

Court held that explanation offered by the Department for seeking condonation of delay of 484 days in filing the special leave petition not being satisfactory and sufficient. SLP of Revenue is dismissed.

PCIT v. SPML Infra Ltd. (2024) 339 CTR 393/ 300 Taxman 366 (SC)

Editorial : PCIT v. SPML Infra Ltd (Cal)(HC)(ITA No. 209 of 2022 dt. 16 th Nov, 2022)

S. 261 : Appeal-Supreme Court-Interpretation of taxing statue-Binding precedent-Review petition is pending-Judgment of the three Judge Bench is holding the field-Judgment has to be followed-Non-Resident-Computer software supplier-Not royalty-Not taxable in India-DTAA-India-USA. [S. 9(1)(vii), 90, Art. 12, Code of Civil Procedure, 1908, Order XLVII, R 1] 2659

Held that once a judgment is passed by a Court following another judgment and subsequently the latter judgment is overruled on a question of law, it cannot have an effect of reopening or reviving the former judgment passed following the overruled judgment nor can the same be reviewed. This is having regard to the Explanation to Order XLVII, R. 1 of the CPC. 1908. Notwithstanding that a review petition as against the judgment in *Engineering Analysis Centre of Excellence (P) Ltd. v CIT (2021) 319 CTR 497 / 199 DTR 361 (SC)* is pending before the Supreme Court, as on today the said judgment of the three Judge Bench is holding the field and therefore the said judgment has to be followed. Amount paid to non-resident computer manufacture supplier for resale / use of the computer software is not royalty for use of computer software as per article 12 hence not taxable in India.

CIT v. Gracemac Corporation Supreme (2024) 337 CTR 588 (SC)

S. 263 : Commissioner-Revision of orders prejudicial to revenue –Remittances to non-resident-Import of raw materials-Deduction of tax at source-Tribunal setting aside the order of Commissioner-Commissioner cannot make addition without directing the Assessing Officer to re-examine issue-Order of High Court is affirmed-SLP of Revenue is dismissed. [S. 40(a)(ia), 195, 254, Art. 136] 2660

Dismissing the appeal of the Revenue the Court held that the conclusion of the Tribunal, to the extent, that the Commissioner could not have unilaterally directed the Assessing Officer to add back the sum paid towards the import of raw materials by holding that it was disallowable as expenditure could not have been issued under section 263 without the Assessing Officer re-examining the issue was beyond the jurisdiction of the Commissioner, did not suffer from any legal infirmity. Order of Tribunal is affirmed. No substantial question of law. SLP of Revenue is dismissed (AY. 2007-08)

CIT v. Paradeep Phosphates Ltd. (2024) 471 ITR 422 (SC)

Editorial : CIT v. Paradeep Phosphates Ltd. (2024) 471 ITR 419 (Orissa) (HC)

S. 263 : Commissioner-Revision of orders prejudicial to revenue –Order of Tribunal quashing the revision order is affirmed by High Court-SLP of Revenue is dismissed. [S. 254(1), Art. 136] 2661

On appeal by the Revenue the Court held that the Tribunal has set aside order of Principal Commissioner on ground that direction requiring Assessing Officer to undertake

a fresh exercise of assessment was not preceded by any enquiry. Tribunal held that this was not a case of inadequacy of enquiry but a case of absence of enquiry. On appeal High Court held that the order of Tribunal being a plausible one and not erroneous in law. Order of Tribunal is affirmed. SLP of Revenue is dismissed (AY. 2019-10)
PCIT v. Earth Minerals Co. Ltd. (2024)470 ITR 569 /162 taxmann.com 273 (SC)
Editorial : PCIT v. Earth Minerals Co. Ltd (2024) 470 ITR 567/162 taxmann.com 272 (Orissa) (HC)

2662 **S. 263 : Commissioner-Revision of orders prejudicial to revenue-Interest on refunds-Order passed giving effect to the order of the CIT(A)-Order of Tribunal quashing the revision order is affirmed-SLP of Revenue is dismissed. [S. 244A, Art. 136]**
Dismissing the appeal of the Revenue the High Court held that while giving effect to CIT(A)'s order, it resulted in refund of certain sum and subsequently, on verification of records, Commissioner noticed that AO had failed to conduct proper enquiries and examine issues in an appropriate manner which gave rise to an erroneous enhanced refund as the Commissioner felt that delay in claiming enhanced refund was attributable to assesse and accordingly interest under section 244A of the Act was not allowable on said refund. The High Court held that since there was nothing in findings of Commissioner as to how the assessee delayed proceedings that resulted in refund or what were reasons that could be attributable to assessee and it was only in giving effect to CIT(A)'s order by AO which resulted in refund therefore it could not be stated that proceedings resulting in refund were delayed for reasons attributable to assessee wholly or in part. Accordingly the order of Tribunal is affirmed. SLP of Revenue is dismissed. (AY 2007-08).
PCIT v. Bank of Baroda (2024) 300 Taxman 266 (SC)
Editorial : PCIT v. Bank of Baroda(2023) 294 Taxman 455 /333 CTR 835 (Bom)(HC)

2663 **S. 263 : Commissioner-Revision of orders prejudicial to revenue –Capital gains-High Court affirmed the quashing of revision order-SLP of Revenue is dismissed, delay of 484 days is not explained. [S. 45, Art. 136]**
Assessing Officer computed capital gain in respect of sale of an asset. PCIT invoked section 263, claiming Assessing Officer passed assessment order without necessary enquiries and verifications, thus making it erroneous. The Tribunal allowed the appeal by the assessee, noting that the AO had made the necessary enquiries and verifications regarding the computation of capital gain during the assessment process. It held that the PCIT's claim that the AO did not conduct due enquiry was factually incorrect, and his method of computation would be prejudicial to the revenue's interest. High Court affirmed the order of the Tribunal. SLP of Revenue is dismissed as the delay of 484 days is not explained. (AY. 2017-18)
PCIT v. SPML Infra Ltd. (2024) 300 Taxman 366 /240 DTR 41 (SC)
Editorial : PCIT v. SPML Infra Ltd. (2024) 164 taxmann.com 504 (Cal)(HC)

S. 263 : Commissioner-Revision of orders prejudicial to revenue-Capital gains-Full value of consideration-Stamp valuation-Land was sold by secured creditors-Order of Tribunal quashing the revision order is affirmed-SLP of Revenue is dismissed. [S. 45, 50C, 143(1), The Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (SARFAESI Act), Art. 136] 2664

The return of income is accepted under section 143(1) of the Act. Commissioner revised the order on the ground that a land was sold by assessee to an entity below value adopted by concerned authority for levy of stamp duty, and therefore, there was under-assessment of income to extent of differential amount, and accordingly, assessment made was contrary to provisions of section 50C of the Act. On appeal the Tribunal held that it was not assessee who effectuated sale of subject land and land was actually sold by secured lenders to recover dues owed to them by assessee. Principal Commissioner had failed to notice these underlying facts while invoking his powers under section 263 of the Act. Accordingly the revision order was quashed. On appeal by the Revenue the court held that the twin conditions for invoking powers under section 263 i. e. not only order should be erroneous, but it should also be prejudicial to interest of revenue were not met. Accordingly the order of the Tribunal is affirmed. SLP of Revenue is dismissed. (AY. 2014-15)

PCIT v. HTL LTD. (2024)467 ITR 573 /300 Taxman 598 (SC)

Editorial : PCIT v. H. T. L Ltd. (2023) 294 Taxman 38/ (2024) 467 ITR 163 (Delhi)(HC)

S. 263 : Commissioner-Revision of orders prejudicial to revenue-Capital gains-Cost of improvement-Cost of acquisition-Paid to shareholders under Family Settlement-Relinquishment of rights-Encumbrance charges as cost of improvement-Revision order is affirmed-Review petition is dismissed. [45, 48, 50A, 55(1))b), Art. 136] 2665

Assessee-company, engaged in manufacture and export of garments, sold its land to discharge encumbrances from sale proceeds to pay off its shareholders under dispute. It claimed encumbrance charges as cost of improvement while computing long-term capital gains and same was accepted by Assessing Officer. Commissioner passed the revision order and set aside assessment order on ground that assessee's claim of expenses were wrongly allowed as deduction since they did not qualify as capital expenditure nor did they result in any enduring improvement to value of capital asset. The Commissioner also held that the assessee did not make payments to remove encumbrances as claimed and neither was there compliance with sections 50A and 55(1)(b) while passing of assessment order. Tribunal and High Court set aside order of Commissioner. Supreme Court held that order passed by Assessing Officer was erroneous as well as prejudicial to interest of revenue and thus it could not be said that Commissioner erred in exercising jurisdiction under section 263. High Court committed a very serious error in setting aside order passed by Commissioner in exercise of powers under section 263 and, thus, order of Commissioner was restored Assessee filed review petition the Court held that there being no apparent error in order warranting its reconsideration, review petition was to be dismissed. (AY. 2007-08)

Paville Projects (P.) Ltd. v. CIT (2024) 298 Taxman 746/337 CTR 880 (SC)

Editorial : CIT v. Paville Projects (P.) Ltd (2023) 293 Taxman 38/ 453 ITR 447/332 CTR 28/ 224 DTR 185 (SC)

2666 **S. 263 : Commissioner-Revision of orders prejudicial to revenue-Business expenditure-Specific query was raised in the original assessment proceedings-Mere failure to issue notice under section 133(6) did not warrant exercise of jurisdiction under section 263 of the Act-Order of Tribunal is affirmed-SLP of Revenue is dismissed. [S. 37(1), 133(6), 143(3), Art. 136]**

Dismissing the appeal of the Revenue the court held that the Assessing Officer had raised specific query with regard to job work charges and assessee had also filed party-wise details concerning relevant bills and vouchers including payment made through account payee cheques, withholding of tax and confirmation from concerned parties. Mere failure to issue notice under section 133(6) did not warrant exercise of jurisdiction under section 263 of the Act. Order of Tribunal quashing the revision order is affirmed. SLP of Revenue is dismissed. (AY. 2015-16)

PCIT v. R. K. Jain Infra Projects (P.) Ltd. (2024) 297 Taxman 369 /464 ITR 584 (SC)

Editorial: PCIT v. R. K. Jain Infra Projects (P.) Ltd(2023) 293 Taxman 465 /2024) 464 ITR 555 (Delhi)(HC)

2667 **S. 263 : : Commissioner-Revision of orders prejudicial to revenue-Business expenditure-Interest –Real estate business-Not commenced the business-Investing in shares of subsidiary-Not allowable as deduction-SLP of assessee is dismissed as fresh assessment order was passed and the matter is pending before ITAT. [S. 37(1), Art. 136]**

High Court held that assessee-company had not commenced business of development of SEZ/Real estate and merely obtained loan from holding company which was utilized for investing in shares of subsidiary company, interest paid on loan could not be treated as expenditure incurred for purpose of business. SLP filed by assessee is dismissed. Fresh assessment order was passed and the matter is pending before ITAT. (AY. 2009-10)

Zuari Management Services Ltd. v. CIT (2024) 298 Taxman 551 /471 ITR 130 (SC)

Editorial : Zuari Management Services Ltd. v. CIT (2017) 88 taxmann.com 625 / 146 DTR 177/ 292 CTR 327 (2024) 471 ITR 123 (Bom)(HC)

2668 **S. 263 : Commissioner-Revision of orders prejudicial to revenue –Remittances to non-resident-Import of raw materials-Deduction of tax at source-Tribunal setting aside the order of Commissioner-Commissioner cannot make addition without directing the Assessing Officer to re-examine issue. [S. 40(a)(ia), 195, 254, 260A]**

Dismissing the appeal of the Revenue the Court held that the conclusion of the Tribunal, to the extent, that the Commissioner could not have unilaterally directed the Assessing Officer to add back the sum paid towards the import of raw materials by holding that it was disallowable as expenditure could not have been issued under section 263 without the Assessing Officer re-examining the issue was beyond the jurisdiction of the Commissioner, did not suffer from any legal infirmity. Order of Tribunal is affirmed. No substantial question of law. (AY. 2007-08)

CIT v. Paradeep Phosphates Ltd. (2024) 471 ITR 419 (Orissa) (HC)

Editorial : SLP of Revenue is dismissed, CIT v. Paradeep Phosphates Ltd. (2024) 471 ITR 419 (Orissa) (HC)

S. 263 : Commissioner-Revision of orders prejudicial to revenue-Sale of immovable property-Allowing deduction on amount paid directly by purchaser to release charge of mortgage in property sold under attachment due to personal guarantee given by assessee-Discharge of debt-Order of the Assessing Officer to allow the claim is nether erroneous nor prejudicial to the interest of Revenue. [S. 143(3), 260A] 2669

On appeal the Tribunal held that it was not a case where no enquiry was made by the Assessing Officer during the course of assessment proceedings or that the Assessing Officer failed to apply his mind to the issues on hand and taken a view which was not legally plausible. The Commissioner set aside the assessment order merely because the Principal Commissioner had a different opinion. On appeal held that merely because the Principal Commissioner had a different opinion he should not have invoked revision jurisdiction. The Tribunal held that the assessee did not create any mortgage on the property but he had given a personal guarantee to the entity for discharge of the debt for which there was a charge over the property and for release of the personal guarantee of the assessee, the amount was paid by the buyer directly to the entity Titco Ltd. It was also not in dispute that the assessee did not avail of any loan on mortgage of the property sold by him. The Tribunal had rightly held that the assessment order by the Assessing Officer was neither erroneous nor prejudicial to the interests of the Revenue. No substantial question of law. (AY. 2013-14)

PCIT v. Rinki Shashikant Gandhi (2024)471 ITR 321 (Guj) (HC)

S. 263 : Commissioner-Revision of orders prejudicial to revenue –Order of Tribunal quashing the revision order is affirmed-No substantial question of law. [S. 254(1), 260A] 2670

On appeal by the Revenue the Court held that the Tribunal has set aside order of Principal Commissioner on ground that direction requiring Assessing Officer to undertake a fresh exercise of assessment was not preceded by any enquiry. Tribunal held that this was not a case of inadequacy of enquiry but a case of absence of enquiry. Order of Tribunal being a plausible one and not erroneous in law. Order of Tribunal is affirmed. (AY. 2019-10)

PCIT v. Earth Minerals Co. Ltd (2024) 470 ITR 567/162 taxmann.com 272 (Orissa) (HC)

Editorial : SLP of Revenue is dismissed, PCIT v. Earth Minerals Co. Ltd. (2024)470 ITR 569 /162 taxmann.com 273 (SC)

S. 263 : Commissioner-Revision of orders prejudicial to revenue –limited scrutiny-Method of accounting-When the Assessing Officer could not have possibly examined issue which is not subject matter limited scrutiny-Commissioner cannot revise the order-Order of Tribunal is affirmed. [S. 40A((3), 145, 260A] 2671

Tribunal set aside the order of the revision order of the Commissioner on the ground that in instant case limited scrutiny was in respect of excess liability shown and disallowance under section 40A(3), whereas show cause notice under section 263 was regarding FIFO method of valuation of closing stock adopted by assessee and these were unconnected issues. Thus the, assessment order could not be held to be erroneous and prejudicial to interest of revenue when Assessing Officer could not have travelled beyond issues forming subject matter of limited scrutiny. Order of Tribunal quashing the revision order is affirmed. (AY. 2014-15)

PCIT v. Shark Mines and Minerals (P.) Ltd. (2024) 470 ITR 76 /151 taxmann.com 71 (Orissa) (HC)

Editorial: Shark Mines and Minerals (P.) Ltd v. PCIT (2014) 117 ITR 67 (Cuttack)(Trib)

2672 **S. 263 : Commissioner-Revision of orders prejudicial to revenue –Penalty-Concealment-Doctrine of merger-No merger-Revision order is affirmed-VDI Scheme, 1997. [S. 271(1)(c), 274]**

Petitioner had declared 101442. 5 gms. of gold under VDI Scheme, 1997. During search operation in petitioner's son's residence, 2034. 1 gms. of gold found was claimed to be out of 101442. 5 gms. declared by petitioner in Assessing Officer imposed penalty under section 271(1)(c). Commissioner (Appeals) deleted penalty holding that the possibility that the Gold jewellery was received by assessee during her marriage could not be ruled out and, therefore, no concealment was established beyond doubt. Tribunal being of view that assessee had not discharged her burden of explaining source with plausible evidence confirmed penalty levied by Assessing Officer. High Court held that one more opportunity could be given to assessee to appear before Assessing Officer to re-do reconciliation by affording an explanation. The Assessing Officer passed a consequential order deleting penalty. PCIT initiated proceedings under section 263 to impose penalty. The assessee filed writ petition and submitted that there was a merger of order passed by Asstt. Commissioner AO and, therefore, there was no scope for invoking section 263 to revise assessment. High Court merely gave a fresh opportunity to assessee to explain case afresh. Assessing Officer had passed a consequential order stating that case does not attract penalty since additional income towards investment in jewellery was offered only to purchase peace with department. Since there was no merger of order of AO with CIT(A), no case was made out for interfering with order passed by PCIT, petition is dismissed. (SJ) (AY. 2012-13)

R. Revathy v. ACIT (2024)470 ITR 56 / 160 taxmann.com 464 (Mad) (HC)

2673 **S. 263 : Commissioner-Revision of orders prejudicial to revenue-Method of accounting-Once order under S. 263 became final and stood quashed-No question can arise of passing another order as it will be invalid in eyes of law. [S. 143(3), 145, 260A]**

On an appeal preferred by the Revenue against the order of the Tribunal, the Hon'ble Meghalaya High Court had to decide on questions relating to the finality of assessment order passed by AO under section 263 read with section 143(3) of the Act. The assessee followed the mercantile method of accounting, but recognized interest on debtors on cash basis, This had been accepted from A. Y. 2003-04. The PCIT sought to revise the order on the ground that the method of accounting was hybrid. The HC held that while the principle of res judicata did not apply to tax proceedings, without challenge to the fundamental aspect permeating through earlier assessment years, the assessment of this year could not be disturbed. The High Court therefore quashed the revision order under section 263. (AY. 2014-15)

PCIT v. North Eastern Electric Power Corporation Ltd. [2024] 469 ITR 4 /164 taxmann.com 307 (Meghalaya)(HC).

2674 **S. 263 : Commissioner-Revision of orders prejudicial to revenue – Denial of exemption-Trust or institution-Investment restrictions-Jurisdictional High Court in favour of assessee when the Assessing Officer has passed the order-Revision order is quashed-Order of Tribunal is affirmed. [S. 2(15), 13(8) 143(3), 260A]**

Assessee-trust filed its return of income and assessment was completed under section 143(3) after scrutiny, allowing capital expenditure claimed by assessee. PCIT held that

the Assessing Officer had allowed claim of capital expenditures even though exemption claimed by assessee was withdrawn in light of provision of section 13(8). He invoked revisional jurisdiction On appeal the Tribunal held that when proceedings under section 263 were initiated, jurisdictional Gujarat High Court had already decided issue in favour of assessee and held that assessee-society, engaged to execute works in connection with supply of water, disposal of sewerage and provision of other services and amenities, could be said to be providing general public utility services within meaning of section 2(15). Supreme Court had also affirmed/upheld said view of High Court. Order passed by Assessing Officer could not be held to be erroneous and prejudicial to interest of revenue. Order of Tribunal is affirmed. (AY. 2017-18)
CIT(E) v. Ahmedabad Urban Development Authority (2024) 301 Taxman 501 (Guj.)(HC)

S. 263 : Commissioner-Revision of orders prejudicial to revenue –Business expenditure-Prior period expenses-Revisional authority must come to a finding that order of assessment is both erroneous and prejudicial to Revenue-Writ petition against Revisional order is allowed. [S. 37(1) 143(3), Art. 226] 2675

Held that the revisional authority in the order did not come to a specific conclusion as to whether the benefit was claimed by the assessee under section 37 of the Act. A plain reading of the order revealed that the matter required examination. The order of the revisional authority under section 263 of the Act was issued without coming to a conclusion that the the assessment order was erroneous and prejudicial to the interest of the revenue, ans merely remandedthe matter to the Assessing Officer to cause a proper enquiry and verification and thereafter, pass a fresh assessment order. The order dated March 31, 2021 was issued in total contravention of the requirements specified under section 263 of the Act, and in violation of law. It was not valid. On writ High Court quashed the revision order passed by the Commissioner. (AY. 2017-18)(SJ)
CMJ Breweries Pvt. Ltd. v. UOI (2024)468 ITR 695 (Gauhati)(HC)

S. 263 : Commissioner-Revision of orders prejudicial to revenue –Capital gains-High Court affirmed the order of the Tribunal quashing of revision order. [S. 45] 2676

During the relevant assessment year the AO computed the capital gain in respect of sale of an asset by the assessee. The PCIT invoked section 263, claiming the Assessing Officer passed the assessment order without necessary enquiries and verifications, thus making it erroneous. The Tribunal allowed the appeal by the assessee, noting that the AO had indeed made the necessary enquiries and verifications regarding the computation of capital gain during the assessment process. It held that the PCIT's claim that the AO did not conduct due enquiry was factually incorrect.. On appeal Tribunal set aside the order of the PCIT. High Court affirmed the order of Tribunal. (AY. 2017-18)
PCIT v. SPML Infra Ltd. (2024) 164 taxmann.com 504 (Cal)(HC)
Editorial : SLP of Revenue is dismissed, delay of 484 days is not explained, PCIT v. SPML Infra Ltd. (2024) 300 Taxman 366 (SC)

2677 **S. 263 : Commissioner-Revision of orders prejudicial to revenue – Special category states – Expansion of business-Merger-Court held that since Tribunal categorically held that assessee was entitled to deduction at 100 per cent, act of Principal Commissioner amounted to revision of order of Tribunal which is beyond jurisdiction of Principal Commissioner-Order of Tribunal is affirmed. No substantial question of law. [S. 80IC 260A]**

Assessee is engaged in business of manufacture of Aluminum Extrusion. Assessee started its manufacturing activities in Baddi, Himachal Pradesh in assessment year 2005-06 and claimed deduction under section 80IC. Thereafter, assessee undertook substantial expansion during assessment year 2009-10 and started claiming 100 per cent deduction from assessment year 2010-11 onwards. Assessing Officer opined that assessee had wrongly claimed 100 per cent deduction in assessment year 2013-14 and restricted deduction to 30 per cent. Tribunal allowed appeal of assessee and restored deduction at 100 per cent. Principal Commissioner after adjudication of appeal by Tribunal formed an opinion that assessee had wrongly claimed deduction at 100 per cent whereas it is entitled at 30 per cent during assessment year 2013-14 and passed order under section 263. Tribunal quashed the Revision order. On appeal the Court held that since Tribunal categorically held that assessee was entitled to deduction at 100 per cent, act of Principal Commissioner amounted to revision of order of Tribunal which was beyond jurisdiction of Principal Commissioner. Order of Tribunal is affirmed. No substantial question. of law. (AY. 2013-14)

CIT v. Valco Industries Ltd. (2024) 300 Taxman 219 / 2025) 476 ITR 677 (P & H)(HC)

2678 **S. 263 : Commissioner-Revision of orders prejudicial to revenue-After initiating proceedings Commissioner is required to conduct enquiry-Reasons for satisfaction or non-satisfaction are required to be recorded-Procedure is not followed-Order of Tribunal affirming the Revision is set aside-Matter remanded back to Commissioner to reconsider the reply and the documents of assessee. [S. 260A]**

The assessee an apex body, came into existence by an order of the State Government to facilitate collection, storage, processing and disposal of specified forest produce within the periphery of the State of Chhattisgarh and the society was entitled for a commission of Re. 1 per annum for the aforesaid services rendered by it as an agent of the State Government of Chhattisgarh. The Commissioner exercised revisionary jurisdiction under section 263 against the assessee on ground that the Assessing Officer had not conducted proper enquiry regarding genuineness of the contention made by the assessee. The Commissioner set aside the assessment order and remanded the matter back to the Assessing Officer for fresh adjudication of the issues discussed by conducting necessary enquiries in this case and framing fresh assessment order after affording adequate opportunities to the assessee. On appeal, the Tribunal upheld the order passed by the Commissioner. On appeal the Court held that the reasons for coming to the conclusion that the lack of enquiry caused prejudice to the revenue are required to be recorded. In the instant case, after going through order, which is the substratum of the entire issue, it is manifest that the said procedure has not been followed. Accordingly the appeal is allowed and question of law is answered in favour of the assessee and case is remanded back to the Principal Commissioner to reconsider the reply and the documents of assessee.

Chhattisgarh State Minor Forest Produce (Trading and Development) Co-operative Federation Ltd. v. PCIT (2024) 300 Taxman 202 (Chhattisgarh)(HC)

S. 263 : Commissioner-Revision of orders prejudicial to revenue –Educational Institution-Charitable purpose-Subsidised fee collected and corporate donations utilized solely for purposes of educational activities-Surplus funds utilised for educational purposes-Activities fell within definition of S. 2(15)-Imparting of education through Virtual Mode-Order of Tribunal quashing the revision is affirmed-The question with respect to whether the Commissioner (E) was justified in invoking its powers conferred by section 263 was insignificant hence not answered. [S. 2(15), 11, 12A,13(1)(c), 80G(5), 143(3), 260A] 2679

Dismissing the appeal of the Revenue The Tribunal held that the corporate receipts were mainly flowing from the Corporate Social Responsibility obligations of the concerned business houses which could not be viewed or characterised as aimed at profiteering. Those corporate donations were asserted to have been utilised solely for the purposes of the educational activities which were undertaken by the assessee and the veracity of these facts was not contested by the Revenue. Section 2(15) as being concerned with training and developing knowledge, skill, mind and character by formal schooling. The tests as propounded by the Supreme Court were met by the assessee. The mode and manner in which education was imparted would be a concept which would have to necessarily be evaluated considering the march of technology and the myriad modes of imparting instruction which presently exists and have enabled institutions to overcome barriers of distance and time. Imparting of education through a virtual mode or by the adoption of new technologies would not detract from such activity, otherwise fulfilling the requirements of structured education. The test, as propounded by the Supreme Court required to evaluate whether a formal and systematic process of imparting education had been adhered to. Approving and affirming the observations of the Tribunal to the effect that the whole world is experiencing "new normal" in all spheres of activities and education is no exception, that classrooms have no bricks and mortar, no benches and blackboards, that "blackboard collaborate" and digital white boards have replaced blackboards, that the teachers and students do not assemble at one place but they reach each other on cloud through Meets, Teams, WebEx and Zoom! That chat boxes are medium of group discussion, that timings are 24/7, that still it has all the essentials of a "classroom" and the digital structure covers "process of training, developing the knowledge, skill, mind and character of students like normal schooling and that therefore, in true sense the activities performed by the assessee were no different from "classrooms", that the educational activities carried on were covered by the provisions of section 2(15) and were neither business nor profession of the assessee but constituted charitable activities since it did not charge the fees at the level of market rate and even otherwise the surplus generated was also used for charitable activities of education as found by the Assessing Officer for the assessment year 2014-15 and for earlier assessment years and therefore, his order under section 143(3) was not erroneous, and that therefore the order passed by the Commissioner (E) under section 263 for the assessment year 2014-15 was quashed and set aside. Considering the conclusions on the principal issue of section 2(15), the question with respect to whether the Commissioner (E) was justified in invoking its powers conferred by section 263 was insignificant hence not answered. Ratio in *New Noble Education Society v. CIT (2022) 448 ITR 594 (SC) ; 2023) 6 SCC 649, relied on. Explained the ratio in Ratio,Sole Trustee, Loka Shikshna Trust v. CIT (1975) 101 ITR 234 (SC) ; (1976) 1 SCC 254* (AY. 2014-15)

CIT (E) v. Niit Foundation (2024)467 ITR 63 / 64 taxmann.com 628 (Delhi)(HC)

2680 **S. 263 : Commissioner-Revision of orders prejudicial to revenue –Accrual-Accounting-Once the revisionary order stood quashed-Subsequent order is not valid. [S. 143(3),145(1), 260A].**

The AO had passed an order which was set aside by the Principal CIT, and thereafter, the order of reassessment was passed by the AO under s. 263 r/w s. 143(3). Once the order under s. 263 has become final and stood quashed, no question of passing another order will arise in view of the fact that the subsequent order passed by the AO is invalid in the eye of law, as the opinion formed by the AO is not sustained on the reasoning that revision under s. 263 is not permissible. When the order of assessment is found to be erroneous and prejudicial to the interest of Revenue, the right vests with the Principal CIT to review the order and since the said stipulation has not been satisfied, the order passed under s. 263 cannot stand on its legs. Order of Tribunal is affirmed. (AY. 2014-15)

PCIT v. North Eastern Electric Power Corporation Ltd. (2024) 339 CTR 424 / 164 taxmann.com 307 (Meghalaya) (HC)

2681 **S. 263 : Commissioner-Revision of orders prejudicial to revenue – More than one source of income-Addition made in respect of one source-Failure to consider genuineness of transactions in respect of other sources of income-Order of Assessing Officer erroneous and prejudicial to revenue.**

Held, that the assessee was a works contractor. He had income from different sources; from a firm, house property and other sources. Hence, the income declared by the assessee was not solely from the contract work. Essentially, the Commissioner had found the order to be erroneous for reason of non-payment into the Treasury, of the tax deducted at source having not been verified and also the sundry creditors having not been examined ; the latter ground resulted in the finding that the estimation of profits on the contract receipts alone would be an erroneous exercise and it caused prejudice to the interests of the Revenue. The order of revision setting aside the order of assessment is valid. (AY. 2012-13)

CIT v. Dhananjay Kumar Yadav (2024)466 ITR 196 /159 taxmann.com 638 (Pat)(HC)

2682 **S. 263 : Commissioner-Revision of orders prejudicial to revenue-Long term capital gain-Order not prejudicial to interests of Revenue-Revision is not sustainable. [S. 10(38), 45, 260A]**

Allowing the petition, that suo motu revisional proceeding for the assessment year 2017-18 were initiated merely on the basis of a proposal under section 263 without independent application of mind by the Principal Commissioner on the basis of a proposal submitted by the Assistant Commissioner and forwarded by the Joint Commissioner. Hence, the very initiation of the proceeding was illegal, without jurisdiction and untenable. The long-term capital gains in question were exempt and therefore, the non-disclosure of the amount could not result in prejudice to the Department. The net long-term capital gains was shown in the return after deduction of the long-term capital loss and both the long-term capital gains and long-term capital loss were duly shown in the return. Even if the amount in question was considered long-term capital gains there would have been no further tax liability and non-disclosure of such amount could not be prejudicial to the interests of the Revenue since there was

no loss of revenue. Therefore, one of the preconditions for the exercise of powers under section 263 had not been fulfilled. Hence, the notice for initiation of proceedings and the subsequent ex parte order passed under section 263 were quashed and set aside. (AY. 2017-18)
Karan Jain v. UOI (2024)465 ITR 1/164 taxmann.com 1066/ (2025) 342 CTR 207 (Gauhati) (HC)

S. 263 : Commissioner-Revision of orders prejudicial to revenue-Cash credits-Long term capital gains-Penny stock-Principal Commissioner had applied its mind and came to prima facie conclusion that Assessing Officer should have treated entire credit as bogus and added back same under section 68 rejecting claim for exemption under section 10(38)-Order of Tribunal quashing the revision is set aside. [S. 10(38), 45, 68, 143(3), 260A] 2683

Assessee claimed exemption under section 10(38) in respect of Long term capital gain arising from sale of shares. Assessing Officer accepted same and completed assessment under section 143(3). Commissioner passed the revision order on ground that Assessing Officer failed to make proper enquiry in respect of bogus claim of exemption of LTCG by sale of shares of penny stock. Tribunal set aside order passed under section 263 on ground that Commissioner had invoked his jurisdiction solely based upon a proposal received from Assessing Officer. On appeal the Court held that Principal Commissioner had applied its mind and came to prima facie conclusion that Assessing Officer should have treated entire credit as bogus and added back same under section 68 rejecting claim for exemption under section 10(38). It was not a case where Principal Commissioner solely proceeded based on report of Assessing Officer but on perusal of report had examined facts. Court held that Tribunal committed a manifest error in setting aside order passed under section 263 of the Act. Referred, *PCIT v. Swati Bajaj (2022) 288 Taxman 403 /446 ITR 56 (Cal)(HC).* (AY. 2014-15)
PCIT v. Bina Gupta (2024) 299 Taxman 511 (Cal.)(HC)

S. 263 : Commissioner-Revision of orders prejudicial to revenue-Depreciation-Internal Audit party-Assets were not put to use-Assessment order is neither erroneous or prejudicial to the interest of Revenue-Order of Tribunal is affirmed-No substantial question of law. [S. 32, 260A] 2684

Assessment was completed under section 143(3) of the Act. PCIT on the basis of a finding by the internal audit party took a view that during assessment proceedings no proper verification of purchase of new assets by assessee and depreciation claimed on assets had been made by Assessing Officer set aside assessment order with a direction to Assessing Officer to frame de novo assessment after making proper inquiry. Tribunal held that the assessee had not claimed depreciation in tax audit report for Income-tax Act purpose as new assets so purchased were not put to use. Tribunal after considering issue of claiming depreciation by assessee came to conclusion that assessment order was neither erroneous nor prejudicial to interest of revenue and quashed order passed by Pr. Commissioner. High Court affirmed the order of the Tribunal. No substantial question of law. Circulars and Notifications : Instruction No. 9 of 2007, dated 11-9-2007. (AY. 2018-19)
PCIT v. Maheshwari Logistics Ltd. (2024) 298 Taxman 665 (Guj.)(HC)

2685 **S. 263 : Commissioner-Revision of orders prejudicial to revenue-Bad debt-Provision for bad and doubtful debts-Scheduled bank-Questions were asked in the course of assessment proceedings-Replies are filed-Revision is held to be not valid-No substantial question of law. [S. 36(1)(viia), 260A]**

Assessee is a non-banking financial company. The Assessment was completed under section 143(3) of the Act. The Commissioner under section 263 quashed the assessment and remitted matter back to Assessing Officer for a de novo adjudication as regards claim for deduction on account of provision for non-performing assets and interest rate swap on ground that Assessing Officer had not examined aforesaid two issues. In compliance of directions, Assessing Officer adjudicated aforesaid two issues afresh and held that expenditure were capital in nature and, consequently, disallowed same which was confirmed by Commissioner (Appeals). Tribunal held that there was no error or prejudice to interest of revenue as no deduction on account of provision for non-performing assets was allowed to assessee, interest rate swap was an actual loss and only net loss of Rs. 114.05 lacs after setting of gain of interest rate swap was claimed as deduction and, both abovementioned issues were duly examined by Assessing Officer vide questionnaire to which replies were duly furnished by assessee. Tribunal held that inadequacy of enquiry by Assessing Officer with respect to certain claims would not in itself be a reason to invoke powers enshrined in section 263. When the Assessing Officer had asked for allowability of claims with respect to issues in question which was consequently, replied by assessee it is not a case where no enquiry whatsoever had been conducted by Assessing Officer with respect to claims under consideration. Tribunal quashed the revision order. High Court affirmed the order of the Tribunal. No substantial question of law. (AY. 2002-03)

PCIT v. Clix Finance India (P.) Ltd. (2024) 298 Taxman 217 / (2025) 473 ITR 650 (Delhi) (HC)

2686 **S. 263 : Commissioner-Revision of orders prejudicial to revenue-Business expenditure-Assessing Officer has applied his mind-Order of revision set aside by the Tribunal is affirmed. [S. 37(1), 57, 143(3), 260A]**

Assessing Officer allowed the business expenditure after getting the replies from the Assessee. PCIT in terms of section 263 cancelled assessment order and directed Assessing Officer to pass fresh assessment order. Assessing Officer passed fresh assessment order and disallowed expenditure claimed under section 37(1) and also disallowed deduction claimed under section 57. On appeal against the Revision order, the Tribunal held that perusal of original assessment order would clearly show it not be a case of complete absence of enquiry and Assessing Officer had sent notice under section 142(1) along with a detailed questionnaire comprising 38 questions to which replies were submitted by assessee and Assessing Officer duly applied mind to same before passing assessment order. The order of revision did not record reasons of arriving at conclusion that assessment order is erroneous and prejudicial to interest of revenue. Order of CIT is set aside. High Court affirmed the order of the Tribunal. (AY. 2016-17)

PCIT v. Mohak Real Estate (P.) Ltd. (2024) 298 Taxman 362 /336 CTR 808 / (2025) 474 ITR 313 (Delhi)(HC)

S. 263 : Commissioner-Revision of orders prejudicial to revenue- Cash credits –Share application money-Second revisionary order-Order of Tribunal setting aside second revisionary order is affirmed. [S. 68, 143(3), 260A] 2687

Commissioner invoked revisionary jurisdiction under section 263 in respect of share application money received by assessee-company. Tribunal set aside revisionary order passed by Commissioner on ground that Assessing Officer in compliance with first revisionary order had called for details of share application money received and conducted detailed enquiry regarding same and thereafter passed the consequential order Dismissing the appeal the Court held that since in second round of litigation, Tribunal had found that Assessing Officer in compliance with revisionary order had conducted detailed enquiry in respect of share application money, Tribunal was justified in setting aside second revisionary order passed by Commissioner. (AY. 2012-13)

PCIT (Central) v. Rani Sati Agro Tech (P.) Ltd. (2024) 298 Taxman 498 (Cal.)(HC)

S. 263 : Commissioner-Revision of orders prejudicial to revenue-Method of accounting-Closing stock-Not recorded a specific finding that it was a case of no enquiry by Assessing Officer-Order of Tribunal quashing the revision order is affirmed. [S. 145(3), 260A] 2688

Assessing Officer completed assessment under section 143(3). Commissioner revised the order and directed Assessing Officer to make necessary investigation in respect of understatement in closing stock, secured loan and commission and pass order in accordance with law. Tribunal held that the Assessing Officer after perusal of documents, stock register, etc. completed assessment. The Commissioner while exercising power under section 263 had not recorded a specific finding that it was a case of no enquiry by Assessing Officer. Accordingly the tribunal, allowed appeal of assessee and quashed the order of the Commissioner. High Court affirmed the order of the Tribunal. (AY. 2009-10)

CIT v. Gopal Sharma (2024) 298 Taxman 49 (Cal.)(HC)

S. 263 : Commissioner-Revision of orders prejudicial to revenue-Special Economic Zones-Subjective exercise-Order of Tribunal quashing the revision is affirmed. [S. 10AA] 2689

Held, dismissing the appeal of the Revenue the Court held that the Assessing Officer had conducted sufficient inquiry and examined the assessee's eligibility to claim for deduction under section 10AA. It was not a case of "no inquiry" or "lack of inquiry". The Tribunal was justified in quashing the order of the Principal Commissioner passed under section 263 and holding that the order of the Assessing Officer was not erroneous or prejudicial to the interests of the Revenue. (AY. 2012-13)

PCIT v. Nya International (2024) 462 ITR 44 (Guj)(HC)

S. 263 : Commissioner-Revision of orders prejudicial to revenue-Capital gains-Depreciable assets-Block of assets –Claim of set off of brought forward long term capital loss against short term capital gain under section 50-Plausible view-Order of Tribunal is affirmed. [S. 2(11), 32, 72, 143(3), 260A] 2690

Assessee had sold depreciable assets and worked out short-term capital gain on sale of depreciable assets and after claiming set-off of brought forward long-term capital loss, net taxable capital gain was calculated. Assessing Officer while passing assessment order had taken short-term capital gain as long-term capital gain. Principal Commissioner

passed order under section 263 on ground that there was error in assessment order by treating short-term capital gain as long-term capital gain by Assessing Officer. Tribunal accepted claim of assessee that its claim of set off of brought forward long term capital loss against short term capital gain returned under section 50 was in accordance with law. On appeal the Court held that the Assessing Officer having taken a plausible view in matter, assessment order could not be said to be erroneous so as to cause prejudice to revenue and, hence, Commissioner could not have exercised revisionary powers under section 263 of the Act. (AY. 2017-18)
PCIT v. National Dairy Development Board (2024) 297 Taxman 306 / (2025) 476 ITR 634 (Guj.)(HC)

2691 **S. 263 : Commissioner-Revision of orders prejudicial to revenue-Shares at premium-Confirmation was filed-Assessing Officer passed the order after verification-Order of Tribunal quashing the revision is affirmed. [S. 56(2) (viib), 143(3), 260A]**
Assessing Officer had examined valuation of shares having regard to fair market value and valuation report of an immovable property of assessee. Commissioner passed an order of revision on ground that Assessing Officer had not made an enquiry about shares issued at such high premium. Tribunal held that assessee had submitted details of shares allotted by it and also copies of share certificate issued and calculation made for fixing issue price. The assessee had submitted confirmations from entities who had purchased shares, along with audited bank statement Tribunal quashed the revision order. High Court affirmed the order of the Tribunal. (AY. 2014-15)
PCIT v. Trojan Developers (P.) Ltd. (2024) 297 Taxman 177 (Delhi)(HC)

2692 **S. 263 : Commissioner-Revision of orders prejudicial to revenue-Industrial undertakings-Infrastructure development-Order of Tribunal quashing the revision order and on merit affirmed by High Court. [80IA(4)(ii), 260A]**
Assessee is engaged in business of providing telecommunication and related support services. Since year 2003, it was dealing in Internet Protocol-Virtual Private Network (IP-VPN) services license and in year 2006, Department of Telecommunication (DoT) granted National Long Distance-International Long Distance (NLD-ILD) license. It filed return of income declaring its total income as nil on basis of deduction under section 80I-A Assessment was completed. PCIT held that since business was commenced by assessee in assessment year 2004-05 having availed 100 per cent deduction from assessment year 2004-05 to assessment year 2008-09, assessee was entitled to claim deduction only to extent of 30 per cent from assessment year 2009-10 to assessment year 2013-14 and he denied deduction to assessee by invoking section 263. Tribunal set aside the Revision order. On appeal the Court held that no material was brought on record by revenue to show that merely by migration from IP-VPN to NLD-ILD license, a new and different undertaking of assessee within meaning of section 80IA(4)(ii) came into existence. Migration of licenses having occurred in December 2006 and Assessing Officer having allowed deductions for earlier years after making inquiries, assessee could not be deprived of similar deductions for subsequent period. The order the tribunal quashing the order of the PCIT was confirmed. (AY. 2010-11)
PCIT v. BT Global Communications India (P.) Ltd. (2024) 297 Taxman 328/337 CTR 179/466 ITR 714 (Delhi)(HC)

S. 263 : Commissioner-Revision of orders prejudicial to revenue-Capital gains or business income-Investment in stock in trade-Deemed dividend-Capital contribution by company-Not loan or advance-Commercial transaction-Order of Tribunal quashing the revision is affirmed. [S. 2(22)(e), 28(i), 45] 2693

Dismissing the appeal of the Revenue the Court held that where Company had contributed capital and not extended any loan or advance to the assessee and the assessee was neither a registered shareholder nor beneficial owner of shares in the said companies. Accordingly, the addition could not have been made in the hands of the assessee under section 2(22)(e) and, therefore, the order passed by AO could not be termed as erroneous and prejudicial to the interests of revenue Order of Tribunal quashing the revision order is affirmed. (AY. 2006-07)

PCIT v. Wig Investment [2024] 461 ITR 117 (Delhi HC)

S. 263: Commissioner-Revision of order prejudicial to revenue-Revision-No finding that assessment order was prejudicial to revenue-Not given adequate opportunity to the assessee to be heard-Revision order is quashed-Revenue is directed to pay the cost of Rs. 10000 which shall be deposited with Allahabad Legal Service committee. [Art. 226] 2694

Allowing the writ petition against the Revision order the Court held that as no opportunity was given to defend or present the case, the order could not be sustained in the eyes of the law. The order did not refer to any finding as enumerated in Explanation 2 to Section 263 to suggest that the assessment order was prejudicial to the interests of the Revenue, order of revision was not valid. Court also directed the Revenue to pay the cost of Rs. 10000 which shall be deposited with Allahabad Legal Service committee. (AY. 2017-18) (SJ)

M. L. Chains v. PCIT [2024] 461 ITR 457 (All)(HC)

S. 263 : Commissioner-Revision of orders prejudicial to revenue- Set-off of loss-Derivative loss-Business income-Documents placed before tribunal not furnished before Principal Commissioner-Non-speaking order-Matter remanded to PCIT. [S. 73(1), 254(1), 260A] 2695

Allowing the appeal of the Revenue the Court held that though the Tribunal had recorded the submission of the assessee that there was no bar under the Act for setting off derivative loss under section 73(1) against business income, the Tribunal had not given any finding as to the correctness of such submission but had held that the Department could not have reverted the contention of the assessee. The record which was examined by the Tribunal was not placed before the Principal Commissioner for consideration so as to take a decision on the merits and the Tribunal had not given a specific finding as to how there was no bar under the Act for setting off under section 73(1) of derivative loss against business income. The orders passed by the Tribunal and the Principal Commissioner were set aside. The matter was remanded to the Principal Commissioner for fresh decision on consideration of the document to be submitted by the assessee. (AY. 2017-18)

PCIT v. Manindra Mohan Mazumdar [2023] 150 taxmann.com 116 /(2024)461 ITR 56 (Cal)(HC)

2696 **S. 263 : Commissioner-Revision of orders prejudicial to revenue-Cash credits-Not related to the year under consideration-Order of Tribunal quashing the revision is affirmed-As regards applicability of section 43CA, direction of PCIT to that limited extent is held to be justified. [S. 43CA, 68]**

Held that the Tribunal had found that Rs. 18.12 crores lent from GTPL was not received in the assessment year in question but was received in an earlier assessment year and was duly assessed and most importantly the finding had been recorded that the amount represented the opening balance of carried forward credit of an earlier year. According to the findings recorded by the Tribunal, the credit entries appearing in the accounts of the assessee were taken into account and section 68 could not have been invoked for the past credits which were carried forward. The Tribunal had upheld the direction of the Principal Chief Commissioner to the extent that the difference up to 10 per cent. was only saved by the amendment made in the Act and the enquiry directed by the Principal Chief Commissioner in respect of the transaction covered under section 43CA where the difference exceeded 10 per cent. was justified and the direction of the Principal Chief Commissioner to the limited extent was justified. (AY. 2015-16, 2016-17)

ACIT v. Sun and Sun Inframetric Pvt. Ltd. (2024)460 ITR 258 (Chhattisgarh)(HC)

2697 **S. 263: Commissioner-Revision of orders prejudicial to revenue-Cash credits-Opting VSV Scheme is closure of disputes-Revision order is bad in law reopened by issuing notice under section 263 for revising assessment order.[S. 68, 260A, Direct Tax Vivad Se Vishwas Act, 2020, S. 4]**

AO passed assessment order making addition to the total income pertaining to the estimation of profit 8% of transactions of shares carried out during the year under consideration by the assessee on NSE, which order was disputed. The assessee settled the pending dispute under VSV 2020, After the dispute was settled, the Pr. CIT found the whole transaction of shares as unexplained and ordered fresh assessment. The Tribunal set aside the fresh assessment holding that the Pr. CIT was not justified to initiate proceedings. The Tribunal observed that Section 6 of the Direct Tax Vivad Se Vishwas Act, 2020, makes it very clear that once there is a compliance with the timeliness specified under section (5), the designated authority shall not institute any proceedings in respect of an offence or aims or levy any penalty or charge any interest under the Income-tax in respect of the tax arrears, and therefore quashed the order of the PCIT. The Hon'ble Gujrat High Court upheld the order of the Tribunal and held that it was not open for the authorities to initiate proceedings under section 263 of the Act, when they were barred. (AY. 2012-13)

PCIT v. Swatiben Biharilal Parekh (Mrs.) (2023) 156 taxmann.com 267 / (2024) 296 Taxman 38/463 ITR 759 (Guj)(HC)

2698 **S. 263 : Commissioner-Revision of orders prejudicial to revenue- Expenditure on scientific research-Form 3CL filed but delay in intimation-Commissioner passed the revision order-Order of Tribunal quashing the Revision order is affirmed. [S. 35(2AB), 260A, Form No. 3CL]**

The Assessee claimed deduction u/s 35(2AB) but did not submit required evidence. Pr. CIT u/s 263 disallowed said deduction. Tribunal dismissed the order of the Pr. CIT.

Revenue filed appeal. The Hon'ble Gujarat High Court observed that since the assessee has filed Form 3CL certifying his Research and Development (R&D) facility approved by the prescribed authority in proper format, merely because the authority failed to send the intimation during the course of assessment proceedings could not be the reason for denying the claim deduction under section 35(2AB) of the Act. It was held that The ITAT is correct in holding that the order of the A. O. is not erroneous and prejudicial to the interest of revenue. (AY. 2016-17)
PCIT v. Schaeffler India Ltd. (2023) 155 taxmann.com 651 /(2024) 296 Taxman 210 (Guj) (HC)

S. 263 : Commissioner-Revision of orders prejudicial to revenue- Expenses or payments not deductible-Cash payments exceeding prescribed limits-Order of PCIT quashing the revision order is affirmed. [S. 40A(3)] 2699
AO issued reopening notice and upon recording reasons to believe, the assessment order was passed by making no addition. The PR. CIT issued show cause notice u/s 263 that it was a case under section 40A(3) as cash withdrawals by the assessee was used for purchasing inventory. The Hon'ble Delhi High Court affirmed the order of the ITAT by observing that if the AO did not bring to tax the amount that was adverted to in the "reason to believe" framed in the first instance, then the PR. CIT could not have triggered proceedings for cash withdrawals under Section 263 of the Act. AY. 2006-07)
PCIT v. Prosperous Buildcon (P.) Ltd.(2024) 296 Taxman 255 /463 ITR 132 (Delhi)(HC)

S. 263 : Commissioner-Revision of orders prejudicial to revenue-Business of road infrastructure and development-AO allowed the claim made under section 80IA after detailed scrutiny-Revision of assessment order on the ground that the assessee is only a work contractor-Unjustified-Rule of consistency is followed. [S. 80IA, 260A] 2700
Dismissing the appeal of the Revenue the Court held that the assessee has not only employed plant and machinery and other assets along with staff but also it had been bearing all risks involved in road infrastructure projects. Thus, assessee could not be treated a mere work contractor. Further, as the assessee was granted deduction under section 80IA in past assessment years and in further assessment year as well, Rule of consistency had to be applied and deduction under section 80IA is to be allowed in relevant assessment year also. PCIT order quashed (AY. 2012-13)
PCIT v. MBL Infrastructure Ltd. (2024) 461 ITR 148 (Cal)(HC)
Editorial : SLP of Revenue is dismissed, PCIT v. MBL Infrastructure Ltd. (2024) 461 ITR 150 (SC)

S. 263 : Commissioner-Revision of orders prejudicial to revenue-Unexplained expenditure –Ad-hoc addition made by the Assessing Officer-Order of Tribunal quashing the direction of PCIT to do de novo assessment is affirmed. [S. 69C, 26A] 2701
Assessee's case selected for scrutiny assessment. AO passed order an and made additions for disallowance of EPF contribution and ad hoc disallowance of 20 per cent of expenses. Pr. CIT, exercising his jurisdiction u/s 263 set aside the assessment order and directed for fresh assessment. Tribunal quashed the order of the Pr. CIT. Dismissing the appeal of the Revenue the Court held that the Pr. CIT has not disputed the existence of the parties and the purchases made or commission paid. No contrary evidence was

placed on record to substantiate that the purchases made or commission paid is bogus. Therefore, no substantial question of law aroseand the appeal was dismissed. (AY. 2014-15)
PCIT v. Ramchandra Dahyabhai Narrow Fab (P.) Ltd. [2023] 155 taxmann.com 431/(2024) 296 Taxman 64 (Guj)(HC)

2702 **S. 263 : Commissioner-Revision of orders prejudicial to revenue- Company-Book profit-Depreciation-Consistently charging depreciation in its books of account at rates prescribed in Income-tax Rules and accounts of assessee had been prepared and certified as per provisions of Companies Act, 1956-A specific query was raised by Assessing Officer on issue of payment made to related party and verification of fair market value as per provision of section 40A(2)(b) and was answered-Order of Tribunal quashing the Revision order is affirmed. [S. 32, 40A(2)(b), 115JB, 260A]**
The PCIT exercising his powers u/s 263 called for revision of the order passed by the AO. The question before the Hon'ble Gujarat High Court was whether the issue of excess depreciation claimed on windmill @80% as prescribed under IT Act instead of the rate of 15. 33% for a continuous plant as per companies Act for the purpose of calculation of book profit u/s 115JB of the IT Act was erroneous or not. Another issue to be considered was whether determination of fair market value u/s 40A(2)(b) of the Act in respect of payments made to related parties during the year under consideration was made without appreciating the facts of the case. The Tribunal held that the PR. CIT has erred in holding that the assessment order as erroneous since the asessee is allowed to claim higher depreciation under the Income Tax rules as against the rate mentioned in the Companies Act. On the second issue, the tribunal followed the decision of the Hon'ble Supreme Court in *Pr. CIT v. Shreeji Prints (P.) Ltd. [2021] 130 taxmann.com 294/282 Taxman 464 (SC)* and held that the PR. CIT cannot hold the assessment order to be erroneous if the AO has made inquiries and accepted the genuineness a plausible view so taken. (AY. 2010-11) The decision of the tribunal was confirmed.
PCIT v. Kansara Popatlal Tribhuvan Metal (P.) Ltd. (2023) 156 taxmann.com 433/(2024) 296 Taxman 88 (Guj)(HC)

2703 **S. 263 : Commissioner-Revision of orders prejudicial to revenue-Mistake in calculation of tax at slab rate instead of the rate mentioned in section 115BBE-Mistake can be rectified under section 154-Revision proceedings cannot be invoked. [S. 115BBE, 143(3), 154]**
Tribunal held that the all the additions made by the AO are in consonance with the Income-tax statute. The calculation of tax as per Section 115BBE of the Act is a mistake which can be rectified under section 154 of the Act and therefore, the provisions of section 263 of the Act cannot be invoked as the prejudice is on account of a mistake in the assessment order made by the AO can be rectified. Revision order is quashed. (AY. 2015-16)(ITA No. 223/ Ahd/ 2021 dt. 8-8-2024)
Dhashrathsinh Ghanshyamisnh v. PCIT (2024) BCAJ-September-P. 59 (Ahd)(Trib)

S. 263 : Commissioner-Revision of orders prejudicial to revenue –Barred by limitation-Issue raised in the revision proceedings are different from re-assessment issue under section 147 of the Act-Time limit to be ascertained from 143(1) order and not under section 147 of the Act-Order is barred by limitation. [S. 143(1), 147, 148] 2704

Held that revision order against the order under 147 is barred by the limitation as the issue raised in revisionary proceedings are different from the reassessment issue under section 147. The time limit to be ascertained from 143(1) order and not from the order under section 147 of the Act. Relied on *Alagendran Finance Ltd v. PCIT (2007) 293 ITR 11 (Mad) (HC), Indira Industries Ltd v. PCIT (2018] 95 taxmann.com 292 (Mad)(HC), CIT v. Lark Chemicals Ltd (2014) 368 ITR 655(Bom)(HC), PCIT v. Lark Chemicals Ltd (2018) 259 Taxman 365 (SC) (AY. 2016-17)(ITA No. 2923/ Mum/ 2024 dt. 30-10-2024)*
Indian Education Society v. CIT(E) (2024) Chamber's Journal-December-P. 105 (Mum)(Trib)

S. 263 : Commissioner-Revision of orders prejudicial to revenue-Formal education through music school-Education-Running a petrol pump whose receipts are claimed to be utilised for meeting its charitable objects-Assessment order is not erroneous and prejudicial to the interest of Revenue-Revision is quashed. [S. 2(15), 11(4), 11(4A)] 2705

Held that the assessee has demonstrated that the entire surplus from the petrol pumpoperated by it was utilized for the main charitable activities of the trust i. e., education, and separate books of accounts have been maintained in respect of such business, hence the twin conditions set out in s. 11(4A) stood satisfied and the petrol pump business carried on by the assessee-trust is to be regarded as business incidental to the attainment of the educational objects of the trust; order of the AO allowing exemption under s. 11 to the assessee cannot be held to be erroneous and prejudicial to the interests of the Revenue, more so as the view adopted by the AO was in accordance with the prevalent law at the material time. (AY. 2018-19)
Smt. Lingammal Ramaraju Shastra Prathistha Trust v. ACIT (E) (2024) 232 TTJ 827 / 38 NYPTTJ 1437 (Chennai)(Trib)

S. 263 : Commissioner-Revision of orders prejudicial to revenue –Assessing Officer has applied his mind-The Principal CIT is required to hold a bare minimum inquiry before passing the order which in the instant case has not happened. Revision order is quashed. [S. 143(3),144, 144B, 147, 263(1)(b)] 2706

Tribunal held that the AO had made enquiries on all the matters from notices issued under s. 142(1) and the assessee had filed submission on the questions in the notices issued by AO from time to time. AO has applied his mind even though the fact that issues were not discussed in the assessment order. The Principal CIT is required to hold bare minimum inquiry before passing a revisionary order which in the instant case has not happened. Revision order is quashed. (AY. 2018-19)
Exotic Realtors & Developers v. PCIT (2024) 231 TTJ 132 / 241 DTR 33 /38 NYPTTJ 993 (Chd) (Trib)

2707 **S. 263 : Commissioner-Revision of orders prejudicial to revenue-Unsigned assessment and non-service of order-Physical copy was signed-Up loaded unsigned copy-Revision is valid. [S. 143(3), 153C]**

Held that the Principal CIT has examined the assessment record and on his satisfaction invoked the jurisdiction under the Act. The contention raised by the Authorised Representative, whether it is unsigned copy of assessment order in ITBA portal and for non-service is immaterial for initiation of the proceedings under s. 263 as this Tribunal has found signed assessment order dt. 27th Dec., 2019 while examining the assessment records. Revision order is up held. (AY. 2018-19)

Ramasamy Sathyan v. ACIT (2024) 230 TTJ 889 / 240 DTR 377 / 163 taxmann.com 519 (Chennai)(Trib)

2708 **S. 263 : Commissioner-Revision of orders prejudicial to revenue –Dividend-Mutual fund and Equity shares-Explanation 2 is not applicable-Revision is quashed. [S. 10(35), 115BBDA, 143(3)]**

During the assessment proceedings the AO has examined the dividend income and reconciled the with Dividend distribution tax (DDT) paid. The Revision order is quashed-Explanation 2 is not applicable. (AY. 2017-18)

Sampark Management Consultancy LLP v. PCIT (2024) 230 TTJ 735 / 241 DTR 84 (Delhi) (Trib)

2709 **S. 263 : Commissioner-Revision of orders prejudicial to revenue-Non-Resident-Trading in shares-CIT has not pointed out any reason for doubting the explanation-Revision order is set aside. [S. 143(3)]**

Tribunal held that the CIT has not pointed out any reason for doubting the explanation of the asseessee which was accepted by the AO. Revision order is quashed and set aside. (AY. 2017-18)

Shama Ajay Patel v. CIT (2024) 230 TTJ 33 (UO) (Ahd) (Trib)

2710 **S. 263 : Commissioner-Revision of orders prejudicial to revenue –Deposit from customers-Lack of proper enquiry–Cash deposit in bank-Revision is valid. [S. 143(3)**

The Tribunal held that assessee does not even know the names and contact details of the persons who deposited cash in his savings bank account and the authorised representative has shown his inability to provide the details, such as invoices of goods, transport bills, etc. Revision is held to be valid due to lack of enquiry. (AY. 2016-17)

Amit Kumar Agarwal v. PCIT (2024) 229 TTJ 473 / 237 DTR 209 (Agra)(Trib)

S. 263 : Commissioner-Revision of orders prejudicial to revenue –Lack of proper enquiry –Educational activities-Rental income exemption-Gross receipts earned from carrying out educational activity-Revision order is quashed and set aside. [S. 10(23C)(vi)] 2711

Allowing the appeal the Tribunal held that some rental income was earned with the intention of applying it for charitable purpose and educational activity. The AO is justified in accepting the claim of the assessee treating the gross receipts having been earned from carrying out educational activity. The order of the AO is neither erroneous nor prejudicial to the interest of the Revenue. Judgment in *New Noble Educational Society v. Chief CIT (2022) 448 ITR 594 (SC)* will operate prospectively from 19th Oct., 2022. Prior to the said judgment of the apex Court, the ratio laid down by the jurisdictional High Court in *DIT (E) v. Sahu Jain Trust (2011) 243 CTR 131 (Cal) (HC)* was applicable. Revision order is quashed and set aside. (AY. 2018-19)

Durgapur Society of Management Science v. ITO (2024) 229 TTJ 458 / 237 DTR 137 (Kol) (Trib)

S. 263 : Commissioner-Revision of orders prejudicial to revenue –Survey-Specific query on undisclosed income in the course of assessment proceedings-Deeming provision is not applicable-Revision is not justified [S. 68, 69, 69D, 115BBE, 133A] 2712

Tribunal held that in the course of assessment proceedings specific questions were asked and the surrendered income was accepted as business income after the AO was satisfied with the explanation of the assessee. The Assessee has provided necessary explanation about the nature and source of such unrecorded transactions and the necessary nexus with assessee's business has been established. The view taken by the AO is clearly a plausible view considering the facts and circumstances of the case and nothing has been pointed out as to how the view so taken is unsustainable in the eyes of law. The order passed by the Principal CIT is set aside. (AY. 2017-18)

Mohan Singh v. PCIT (2024) 229 TTJ 352 237 DTR 97 (Chd)(Trib)

S. 263 : Commissioner-Revision of orders prejudicial to revenue-Project completion method and percentage completion method-Accounting method –Guidance note-Assessing Officer has verified in the original assessment proceedings-Revision order is set aside. [S. 143(3), 145] 2713

Held that the AO has verified and considered the various details in respect of the method adopted by the assessee for recognizing the revenue. Principal CIT has not disproved the material placed on record by the assessee in support of its claim that it has followed percentage completion method and not project completion method. Principal CIT has not substantiated that the assessment order passed by the AO is erroneous as well as prejudicial to the interest of Revenue. Order of PCIT is set aside. (AY. 2018-19)

RDC Ventures v. PCIT (2024) 229 TTJ 369 / 159 taxmann.com 395 (Mum)(Trib)

2714 **S. 263 : Commissioner-Revision of orders prejudicial to revenue-Audit objection-AO has conducted the required enquiry and not violated any of the conditions mentioned for revision of order as required by Expln. 2 of S. 263-Revision order is quashed. [S. 143(3)]**

Tribunal held that the AO while framing the assessment had taken a possible view, and the Revenue did not demonstrate the error on the part of the AO. In fact, when the AO has conducted the required enquiry and not violated any of the conditions mentioned for revision of order as required by Explanation. 2 of s. 263 the order passed by the AO could not be deemed to be erroneous so as to be prejudicial to the interests of the Revenue. Followed, Grasim Industries Ltd. vs. Principal CIT (ITA No. 1964/Mum/2019, dt. 24th may, 2021. (AY. 2013-14)

Jain Carrying Corporation v. PCIT ((2024) 229 TTJ 17 (UO) (Jodhpur)(Trib)

2715 **S. 263 : Commissioner-Revision of orders prejudicial to revenue-Limited scrutiny-Genuineness of expenditure-Wages and labour charges-Contractor, PAN and GST number, copy of Invoices, copy of the ledger account, payment details and the TDS on the payment made are on record-Contractor has not filed the return-The order passed by the AO cannot be held to be erroneous insofar as prejudicial to the Interest of the Revenue. [S. 194C]**

Tribunal held that the fact that the case of the assessee was selected limited scrutiny to verify the genuineness of expenditure with reference payments made to persons falling under s. 194C, same could not be enlarged to include other expenditure claimed by the assessee which are not subject to the provisions of s. 194C and, therefore, Principal CIT cannot initiate proceeding under s. 263 on that issue; since the payment made to the contractor has be duly examined by the AO and necessary documentation of the particulars of the contractor are on record, the claim of the assessee could not be rejected solely because the contractor has not filed its return of income and, therefore, the order passed by the AO cannot be held to be erroneous and prejudicial to the interest of the Revenue. (AY. 2018-19)

Sushil Kumar Gupta & Co. v. PCIT (2024) 229 TTJ 1 (UO) (Chd) (Trib)

2716 **S. 263 : Commissioner-Revision of orders prejudicial to revenue –Lack of proper enquiry-Capital loss-Acquisition cost-Revision is up held-Bad debt-Revision is not valid-Depreciation of investment-Revision is valid-Bad debt-Provision for bad and doubtful debt-Revision is valid. [S. 28(i) 36(1)(vii), 36(1)(viia), 45, 48, 70 143(3)]**

Tribunal held that while computing long-term capital gains by incorrect method assessee got the benefit of foreign exchange fluctuation as well as cost inflation index, both, which is not in accordance with the IT Act. Accordingly revision is valid. As regards bad debt there is no error in the order of the AO in allowing the claim of the assessee after calling for the explanation. Revisional order is not sustainable. As regards provision for depreciation on investment comprising of securities held as stock-in-trade as well as those held as investment the issue is squarely covered by Expln. 2 to S. 263 to such extent the order of the AO is erroneous and prejudicial to the interest of the Revenue. As regards excess deduction u/s 36(1)(viia), revision is up held. As regards deduction granted to rural branch, the AO has granted the deduction without examining the

details. Revision is justified. As regards bad debt the AO has allowed the deduction without examining the details, hence revision is justified. (AY. 2015-16)
ICICI Bank Ltd v. DCIT (2024) 228 TTJ 802 (Mum) (Trib)

S. 263 : Commissioner-Revision of orders prejudicial to revenue-Lack of proper enquiry-Lease rent-Detailed enquiry was made in the course of assessment proceedings-All details were furnished-Order is not erroneous-Revision is quashed-Repairs and maintenance-freight forwarding, miscellaneous expenses and sales promotion-Revision is justified as regards to freight forward expenses. [S. 40A(2)(b), 142(1), 194I] 2717

Held that the assessee furnished copies of rental contracts in soft copy format. All these rental agreements were produced for verification during the course of scrutiny proceedings and the AO made verification thereof, but due to multiple number of contracts, the AO did not refer the same in the assessment order. AO verified the deduction of TDS on rental expenses and found nothing adverse to the details submitted in the soft copy format and also in respect of TDS of all quarters. Principal CIT did not venture to examine the same, and simply directed the AO to conduct inquiries. Revision is not justified. As regards freight forwarding expenses in the P&L a/c,in response to the said questionnaire, the assessee furnished such details. However, assessee has shown provision for freight outward charges. No details of actual payments were submitted before the Principal CIT. Revision is justified to the extent of freight outward expenses. (AY. 2015-16)
Nipro India Corporation (P) Ltd. v. PCIT (2023) 37 NYPTTJ 648/ (2024) 228 TTJ 733 / 236 DTR 201 (Pune)(Trib)

S. 263 : Commissioner-Revision of orders prejudicial to revenue –Lack of proper enquiry-TPO-Transfer pricing-Instruction No. 3 of 2016, dt. 10th March, 2016-Both parties paying tax at similar rate-Failure to follow the directions of the Circular-Order is erroneous. [S. 40A(2)(b)] 2718

Held that AO has not followed the directions of said Circular without mentioning any reasons for not referring the matter to the TPO. The order is erroneous and prejudicial to the interest of Revenue despite the fact that the transaction may not have resulted into loss to the Revenue for the reason that both the parties were paying tax at similar rate. As regards remaining grounds, the assessee had made submissions to the Principal CIT that the issue was examined by the AO by raising queries to which assessee had responded by several letters. Revision is valid as regard to directions made to the AO to refer the matter to TPO but on other counts the order is not valid. (AY. 2019-20)
Richa & Co. v. JCIT (2023) 37 NYPTTJ 1728 / (2024) 228 TTJ 1010 / 236 DTR 178 (Delhi) (Trib)

S. 263 : Commissioner-Revision of orders prejudicial to revenue –Reassessment-Lack of proper enquiry-Issues not subject-matter of reassessment-Issue which is not subject matter of reassessment, Commissioner cannot direct the Assessing Officer to carry out the enquiry as suggested by the Commissioner. [S. 37(1), 40A(2)(vi), 40A(2)(b), 147, 148] 2719

The Assessment was reopened. The AO was satisfied with the explanation given by the assess regarding various issues raised by him and passed the order. The PCIT passed

the revisional order on the ground that the AO has not carried out proper verification. On appeal the Tribunal held that AO having called for the details from the assessee and duly framed the reassessment after coming to the conclusion that there was no justification for making any addition as regards the issues raised in reassessment, Principal CIT was not justified in invoking his revision jurisdiction under s. 263 and directing the AO to carry out further enquiry as regards certain issues which were not subject-matter of the reasons recorded for reopening of assessment. (AY. 2012-13)
Daffodills Pharmaceuticals Ltd. v. PCIT (2023) 157 taxmann.com 195 / 37 NYPTTJ 1306 /(2024) 227 TTJ 870 / 239 DTR 247 (Delhi)(Trib)

2720 **S. 263 : Commissioner-Revision of orders prejudicial to revenue –Granted registration and income is applied for designated purposes-Exercise of revisional jurisdiction is not valid. [S. 11, 12A, 12AA]**
Held that registration has been granted registration under section 12A with effect from April 1, 2002 and the income is applied for the designated purposes per law. Revision order is quashed. (AY. 2003-04 to 2005-06)
Paradip Port Authority v. Dy. CIT (2024)116 ITR 1 / [2025] 170 taxmann.com 713 (Cuttack) (Trib)

2721 **S. 263 : Commissioner-Revision of orders prejudicial to revenue –Income from other sources-Interest-Debentures redeemed after nine years-Conversion of debentures into equity shares-Entire interest deemed to be received by debenture holder upon conversion of debentures into equity shares in year of conversion--Assessing Officer accepted the return-Revision is justified. [S. 2(24)(iv), 47(x), 49(2A), 56, 143(1)]**
Dismissing the appeal the Tribunal held that the whole interest amount of Rs. 75.46 lakhs was deemed to be received by the assessee upon conversion of debentures into equity shares in this year. If the amount of Rs. 61.97 lakhs was not brought to tax, it would never have been brought to tax. The taxability of interest component of debentures that had accrued to the assessee up to the date of conversion. Therefore, the action of the Assessing Officer in accepting the return of income is not in accordance with law. The order had errors which was prejudicial to the interests of the Revenue. The revision of the order is justified. (AY. 2013-14)
Sanjjay Saumyha (Mrs.) v. PCIT (2024)116 ITR 17 (SN)/ [2025] 210 ITD 33 7 (Chennai) (Trib)

2722 **S. 263 : Commissioner-Revision of orders prejudicial to revenue-Conversion firm to limited liability partnership-Firm dissolving on date of conversion-Income earned recorded in hands of Limited Liability Partnership-Tax deducted at source appearing in Firm's name only allowed to firm and not limited liability partnership-No double grant of credit-Revision is not valid. [S. 142(1), 143(2)]**
Held that on the date of conversion of the firm, the firm is dissolved and a new entity was created as a limited liability partnership. Accordingly, the income earned after the date of conversion was recorded in the hands of the limited liability partnership and not the dissolved firm. Therefore, during the year under consideration, since no income was earned by the dissolved firm, no return of income was filed by it. However, the limited liability partnership duly accounted for all the transactions, offered to tax all

the income credited to its account and filed its return for the year under consideration. The firm had requested all the deductors to issue new certificates of tax deduction at source in the name of the limited liability partnership formed on dissolution of the firm. However, certain deductors issued the certificate in the name of the erstwhile firm. In the reassessment proceedings, statutory notices under sections 143(2) and 142(1) were issued and served on the firm which were duly responded to by it with the clarification that no income was earned by it and, therefore, no return was filed for the year under consideration. The income earned belonged to the limited liability partnership and had been so shown in the return filed by it. The Assessing Officer completed the assessment at the returned income without making any additions in the hands of the firm. There is no basis in the findings of the Principal Commissioner that due verification was not made by the Assessing Officer. Since, the tax deducted at source as appearing in the name of the firm is only allowed to the firm and not to the limited liability partnership despite the corresponding income being offered to tax by the limited liability partnership, no prejudice had been caused to the Revenue. Revision is quashed. AY. 2016-17)

United Brothers Multiplast LLP v. PCIT (2024)116 ITR 66 (SN)(Mum)(Trib)

S. 263 : Commissioner-Revision of orders prejudicial to revenue –Additional depreciation-Revision order is quashed. [S. 32, 115JB, 147, 148] 2723

Held that the order of the Assessing Officer is neither erroneous nor prejudicial to the interest of Revenue. The Principal Commissioner had not appreciated the fact that the assessee had credited the excess depreciation of the earlier 11 assessment years to the "reserves and surplus" account in the balance-sheet in terms of the amended provisions of the Companies Act, 2013 and following the guidance note issued by the Institute of Chartered Accountants of India in regard to reversal of depreciation based on the life of the asset irrespective of the method of depreciation followed. The tax effect of expenses or income adjusted directly against the reserves or securities premium account either pursuant to court order or under transitional provisions prescribed in the Accounting Standard, any income credited directly to a reserve account or a similar account should be net of the tax effect. However, reversal of the provision of depreciation was not an income. Therefore, the assessee's method of crediting the reversal of excess depreciation to the "reserves and surplus" account is in accordance with law and, hence, the Assessing Officer's action of accepting the return could not be disapproved. Revision order is quashed and set aside. (AY. 2016-17)

Versatile Card Technology P. Ltd. v. PCIT (2024)116 ITR 11 (SN)(Chennai)(Trib)

S. 263 : Commissioner-Revision of orders prejudicial to revenue –Limitation-Reassessment order is quashed by Tribunal-Original order sought to be revised in revision proceedings is barred by limitation-No error in assessment order-Revision order is quashed. [S. 133(6), 143(3), 147, 148] 2724

Held that the reassessment is quashed by the Tribunal hence the original order sought to be revised in revision proceedings is barred by limitation and also there is no error in assessment order. Revision order is quashed. (AY. 2013-14)

Anchita Properties P. Ltd. v. ITO (2024)115 ITR 401 (Kol)(Trib)

2725 **S. 263 : Commissioner-Revision of orders prejudicial to revenue –Capital gains-Search and seizure-Stamp duty valuation-No new discovery of fact-Order of revision is quashed. [S. 45,48, 50C, 153A]**

Returns of income was not subjected to scrutiny assessment. There was search proceedings. Returned income is accepted in search proceedings. Commissioner revised the assessment order on the basis of finding that stamp duty value of property is higher than sale consideration. On appeal the Tribunal held that there was no new discovery of fact in course of search, no incriminating material was found during search. Revision order is quashed. (AY. 2014-15)

Arati Ray v. Dy. CIT (2024)115 ITR 1 (Kol)(Trib)
Mallika Roy v. Dy. CIT (2024)115 ITR 1 (Kol)(Trib)
Samit Roy v. Dy. CIT (2024)115 ITR 1 (Kol)(Trib)

2726 **S. 263 : Commissioner-Revision of orders prejudicial to revenue –Capital gains-Capital loss-Loss on reduction of shares-Assessable as capital loss-Capital loss can be set off against any other capital gains-Transfer-Reduction of capital resulting in extinguishment of right on shares amounts to transfer-Two possible views-Revision is not valid. [S. 2(47), 143(3)]**

Held that loss on the capital account by way of reduction of capital invested and any loss on capital account is a capital loss and not a notional loss. That the reduction of capital was extinguishment of rights in the shares and it amounted to transfer within the meaning and scope of section 2(47). That the assessee did not receive any consideration on reduction of capital but its investment had reduced to loss resulting into capital loss and while computing the capital gains, capital loss had to be allowed or set off against any other capital gains. The view of the Assessing Officer is a possible view. The Assessing Officer had rightly allowed the computation of long-term capital loss to be set off against the capital gains shown by the assessee. Revision order is set aside. (AY. 2009-10)

Tata Sons Ltd. v. CIT (2024)115 ITR 272 / 158 taxmann.com 601 (Mum)(Trib)

2727 **S. 263 : Commissioner-Revision of orders prejudicial to revenue –Income from other sources-Interest-Failure to conduct adequate inquiries-Interest paid and received-Justification for claiming interest-Without identifying any specific error in the order-Revision order is quashed. [S. 56, 57(iii), 143(3)]**

Held that the Assessing Officer had verified the claim of interest expenses through detailed inquiries. The Principal Commissioner had merely substituted his opinion for that of the Assessing Officer without identifying any specific error in the Assessing Officer's findings or procedure. The Principal Commissioner's observation that the assessee has claimed excess interest is factually incorrect. The assessee had restricted its claim of interest paid on loans to the actual interest received from various parties to whom the amount was advanced for earning interest income. The revision order is quashed and set aside. (AY 2017-18)

Gautam Nipinbhai Nagarsheth v. PCIT (2024) 115 ITR 66 (SN) (Ahd)(Trib)

S. 263 : Commissioner-Revision of orders prejudicial to revenue –Business loss-Set-off of brought-forward loss of earlier year in current year is unjustified-Revision is valid-Direction of Commissioner to reduce interest from the cost of project is not valid-Revision is not justified. [S. 28(i), 143(3)] 2728

Held that the Assessing Officer had allowed the set-off of loss per the assessee's return of income, which is an error. No details were filed by either party with respect to the current position of the pending litigation and the resultant figure of income after finally giving effect to the orders of the appellate authority. The order of the Assessing Officer is erroneous as well as prejudicial to the interests of the Revenue. As regards lease hold land since necessary adjustment had already been made in the books of account at the end of the year under appeal, no asset remained in the project. Under these circumstances, the current year's interest income could not be reduced from the cost of asset of the project. The direction given by the Principal Commissioner is contrary to the facts of the case. Revision is not valid. (AY. 2020-21)

Posco India P. Ltd. v. Dy. CIT (2024) 115 ITR 3 (SN)(Cuttack)(Trib)

S. 263 : Commissioner-Revision of orders prejudicial to revenue –Cash credits-Sale of property-Showing company as seller-26AS showing tax deducted at source-Sub-Registrar's Letter stating no sale transaction is specified-Incorrect income calculation rectifiable-Revision order is quashed. [S. 154] 2729

Held, that the sale of property is not done by the assessee, but V, whose relevant form 26AS was also produced confirming the buyer's deduction of tax at source at 1 per cent. The sale deed showed that the assessee's name was nowhere reflected in the registered sale deed. In addition, the letter from the Sub-Registrar stated that on that specified date there was no property transaction made by the assessee. Revision order is quashed. AY. 2019-20)

Prakash Khatri v. PCIT (2024) 115 ITR 1 (SN)(Ahd)(Trib)

S. 263 : Commissioner-Revision of orders prejudicial to revenue-Search and Seizure-Order passed after getting approval from Joint Commissioner-Order passed after examining the documents-Addition made on third-party based on documents and recorded statements-Third party order is not revised-Double taxation-Referred documents not of impugned assessment year or not belonging to assessee-Revision order is not valid. [S. 133A, 153A, 153B] 2730

Held that Order passed after getting approval from Joint Commissioner, after examining the documents, addition made on third-party based on documents and recorded statements, third party order is not revised which will lead to double taxation referred documents not of impugned assessment year or not belonging to assessee, hence revision order is not valid. (AY. 2015-16 to 2018-19)

Gyan Infrabuild P. Ltd. v. PCIT (2024)114 ITR 184/230 TTJ 273/ 239 DTR 265 /162 taxmann.com 664 (Pat)((Trib)

2731 **S. 263 : Commissioner-Revision of orders prejudicial to revenue –Co-Operative Society-Interest on deposits with Co-Operative Bank-Entitled to deduction-Order of Assessing Officer is not erroneous and prejudicial to interests of revenue-Revision order is set aside. [S. 80P(2)(d), 143(3)]**

Held that the order of Assessing allowing the claim under S. 80P(2)(d) is not erroneous. Order of CIT is quashed and set aside. (AY. 2018-19)

Jagadhri Co-Operative Marketing Cum Processing Society Ltd. v. Pr. CIT (2024)114 ITR 631 / 227 TTJ 676 /239 DTR 99(Chd)(Trib)

2732 **S. 263 : Commissioner-Revision of orders prejudicial to revenue-Income from other sources-Share valuation-Issue of right shares-Deeming provision-Revision on ground unsecured loans not included in valuation-Revision order is set aside. [S 56(2)(viib, R. 11(UA)]**

The assessee issued 5,00,000 equity shares having face value of Rs. 10 at premium of Rs. 50 per equity share. As a consequence it had received Rs. 2,50,00,000 as premium. The assessee justified the premium received by calculating the fair market value of the shares under rule 11UA of the Income-tax Rules, 1962. The Principal Commissioner took the view that the fair market value of the shares was below the premium at which the shares were issued, as the assessee had not considered the unsecured loans in its working of fair market value of shares and accordingly the provisions of section 56(2)(viib) of the Act were liable to be invoked and that the Assessing Officer failed to properly inquire into the share valuation for the purposes of section 56(2)(viib). It was contended that the Principal Commissioner had not considered the assessee's submission that these 5,00,000 shares issued by the assessee were rights issue, which was given to the existing shareholders in their existing shareholding ratio against unsecured loans which were given by them to the assessee-company and that section 56(2)(viib) was not attracted to issue of rights shares. Revision order is set aside. (AY. 2014-15)

Tiki Tar Industries Baroda Ltd. v. PCIT (2024)113 ITR 388 /228 TTJ 227/235 DTR 49 (Ahd) (Trib)

2733 **S. 263 : Commissioner-Revision of orders prejudicial to revenue –Business promotion expenses-Freebies-Change of opinion--Cannot revise the order where the Assessing Officer has conducted enquiry and allowed expenses. [S. 37(1)]**

Held that it was apparent from the facts that the details of business promotion expenses were called for and examined in detail by the Assessing Officer in the course of assessment proceedings. After examining the details as brought on record by the assessee, the Assessing Officer had taken a considered decision that no disallowance on account of business promotion expenses was called for. It was evident from the details of business promotion expenses that the expenditure was not in the nature of freebies or monetary grant and that all the payments were not made to doctors as observed by the Principal Commissioner. The observation of the Principal Commissioner that this payment was in the nature of grant to doctors and that no tax was deducted at source on these payments was, therefore, not correct. When the matter was examined by the Assessing Officer in the course of assessment proceedings and no freebies was found to be provided to the doctors, there was no question of any disallowance in accordance

with the Board's Circular No. 5 of 2012 (2012) 346 ITR 95 (St). That the Principal Commissioner had not brought anything adverse on record to substantiate her allegation that the claim of the assessee was liable to be disallowed under section 37 of the Act. Order of revision is quashed. (AY. 2018-19)
HBC Lifesciences P. Ltd. v. PCIT (2024)113 ITR 65 (SN)(Ahd)(Trib)

S. 263 : Commissioner-Revision of orders prejudicial to revenue –Death of assessee-Commissioner was intimated of death of assessee-Order passed in the name of dead person-Order is bad in law-Additional ground is admitted. [S. 254(1)] 2734
Held that it was explicitly clear that it was in the knowledge of Commissioner that the assessee had expired. The Commissioner after having knowledge of death of the assessee was mandatorily required to pass an order in the name of the legal heir of the deceased, whereas, the order was passed in the name of the assessee, i. e., in the name of a dead person. The order passed in the name of a dead person was illegal and bad in law. Hence, any subsequent proceedings arising therefrom were non est. Additional ground is admitted. (AY. 2009-10)
Sangeeta Saini (Smt.) v. ITO (2024)113 ITR 52 (SN)(Delhi)(Trib)

S. 263 : Commissioner-Revision of orders prejudicial to revenue –Company-Book profit-Voluntary liquidation-Section 115JB is applicable even to a company under voluntary liquidation. [S. 115JB] 2735
Assessee-company is undergoing voluntary liquidation. Assessing Officer completed assessment without applying provisions of section 115JB of the Act. PCIT invoked revision proceedings under section 263 on ground that assessee had not computed income under provisions of MAT. Assessee contended that it was a company undergoing voluntary liquidation, and hence, is not preparing accounts from which any "book profit" could be worked out. On appeal the Tribunal held that neither did Assessing Officer conduct any enquiry nor did he attempt to apply provisions of section 115JB, and hence provision of Section 263 is correctly applied. (AY. 2018-19)
Industrial Investment Bank of India Ltd v. PCIT (2024) 209 ITD 117 (Kol) (Trib.)

S. 263 : Commissioner-Revision of orders prejudicial to revenue –Capital gains-Full value of consideration-Stamp valuation-Property is transferred to Trust in assessment year 2017-18-Revenue has accepted the valuation-No addition can be made on account of stamp valuation in the assessment year 2018-19. [S. 11(IA), 45, 50C] 2736
During assessment year 2017-18, assessee-trust sold immovable property for consideration of Rs. 52.52 crores which was duly offered to tax. Sale deed was registered on 17.05.2017 (relevant to Assessment Year 2018-19). Subsequently, return of income for relevant year 2018-19 was filed by assessee declaring income at Rs. NIL which was accepted and assessment order was passed. Commissioner invoked revision for relevant year 2018-19 on ground that stamp duty value of immovable property sold by assessee was Rs. 82.31 crores as per provisions of section 50C, and therefore, difference between stamp duty value and transaction value was not examined by Assessing Officer which made his order erroneous so far as prejudicial to interest of revenue. On appeal the Tribunal held that the assessee had offered capital gain in

assessment year 2017–18, property was transferred in that year, property got registered in current assessment year, thus, capital gain offered by assessee had been assessed to income tax in assessment year 2017–18. Further there is no provision under section 11(1A) to substitute net consideration with full value of deemed consideration. Even otherwise in case of assessee, a trust, according to provisions of section 11(1A) where a capital asset was sold, transferred, net consideration was required to be utilized for acquisition of another capital asset and in those circumstances, net consideration was deemed to have been applied for charitable purposes to extent consideration was utilized. Therefore order under section 263 passed by CIT for relevant year is unjustified. (AY. 2017-18)
Anjuman-E-Shiateali. v. CIT (2024) 209 ITD 539 (Mum) (Trib.)

2737 **S. 263 : Commissioner-Revision of orders prejudicial to revenue –Contribution to core settlement guarantee fund controlled by Indian Clearing Corporation-Details filed before the Assessing Officer-Failure to showing how order of Assessing Officer is prejudicial to Revenue-Revision order is set aside. [S. 10(23EE), 143(3)]**
Held that the assessment order was passed under section 143(3) after due scrutiny by the Assessing Officer after collecting information through various notices issued to the assessee. The Assessing Officer had collected the information from the assessee and according to the assessment records there was no evidence to show that the Assessing Officer had not verified it in detail. The assessee had submitted all the relevant information, the basis of allocation and adjustment of exempt income before the Assessing Officer. If the Assessing Officer had not verified the adjustment of exempt income claim made by the assessee his order could be considered an erroneous order. The Principal Commissioner had not brought on record how it was prejudicial to the interests of the Revenue. Revision order is quashed. (AY. 2016-17)
BSE Ltd. v. PCIT (2024)112 ITR 195 (Mum)(Trib)

2738 **S. 263 : Commissioner-Revision of orders prejudicial to revenue –Limited scrutiny to full scrutiny-No mention in order-sheet that limited scrutiny converted into full scrutiny-Neither Principal Commissioner nor Department producing any document or approval for converting limited scrutiny into full scrutiny in case of assessee-Revision order and consequential proceedings bad in law-No appeal is filed against 263 order-Revision jurisdiction in this case by the Principal Commissioner was wrong and illegal, the consequential order passed under section 143(3) of the Act was also not sustainable in the eyes of law and was accordingly quashed. [S. 143(3)]**
Held that the main reason why the Principal Commissioner exercised his power of revision was that though the case of the assessee was converted from limited scrutiny to full scrutiny, the Assessing Officer failed to examine these issues. The order-sheets revealed that the case was selected for limited scrutiny relating to the investigation for purchase and sale of shares. However, the issue relating to cash deposits and sundry creditors was not part of the limited scrutiny. The order-sheets further revealed that there was no mention in the order-sheet that the limited scrutiny was ever converted into full scrutiny. Neither was any proposal made by the Assessing Officer for converting limited scrutiny to full scrutiny nor was there any mention of any order of

the higher authorities for converting limited scrutiny to full scrutiny. The Assessing Officer after asking the assessee to furnish the details relating to the transactions in purchase and sale of shares and after examining them had completed the assessment without making any addition and thereby accepting the returned income. There was no mention that the limited scrutiny was converted into full scrutiny. Neither had the Principal Commissioner mentioned in the order any document, whereby, the limited scrutiny was converted into full scrutiny, nor could the Department produce on file any such document or approval for converting the limited scrutiny into full scrutiny in the case of the assessee. Therefore, under the circumstances, the order passed by the Principal Commissioner under section 263 of the Act is bad in law and accordingly the consequential proceedings were also bad in law. Tribunal also held that the assessee had not filed appeal against the section 263 order itself but had challenged the validity thereof in the consequential proceedings passed pursuant to the order passed under section 263 of the Act. Since the exercise of revision jurisdiction in this case by the Principal Commissioner was wrong and illegal, the consequential order passed under section 143(3) of the Act was also not sustainable in the eyes of law and was accordingly quashed. Followed, *Valiant Glass Works P. Ltd v. ACIT (ITANo. 1612/Mim. / 2013, dated July 27, 2016, Westlife Development Ltd v. PCIT (2016) 49 ITR 406 (Mum) (Trib)* (AY. 2014-15)
Anoop Nopany v. ITO (2024)112 ITR 10 (SN)(Kol)(Trib)

S. 263 : Commissioner-Revision of orders prejudicial to revenue –Business expenditure-Four projects-Apportionment of expenditure to projects-Order of CIT is affirmed-The Principal Commissioner is required to provide reasonable opportunities of being heard to the assessee before deciding the case on the merits. [S. 37(1)] 2739
Order of CIT is affirmed there is no dispute on the aggregate expenditure mentioned and claimed in the profit and loss account. In case of dispute about the apportionment of expenses at micro levels (amongst projects), that could have been sorted out with the help of original bills and vouchers of expenditure. Therefore, in the interest of justice, the assessee deserved reasonable opportunity of being heard. The order was to be set aside and the issue of the computational mistake or error referred to in the order of the Tribunal remanded to the Principal Commissioner for decision afresh. The assessee should ensure compliances during the proceedings before the Principal Commissioner. The Principal Commissioner is also required to provide reasonable opportunities of being heard to the assessee before deciding the case on the merits. (AY. 2016-17)
Apace Developers P. Ltd. v. PCIT (2024)112 ITR 49 (SN)(Delhi)(Trib)

S. 263 : Commissioner-Revision of orders prejudicial to revenue –Excess provision of Corporate Social Responsibility expenses of earlier years should have been first written back to profit and loss account and not in Balance-Sheet-No discussion in the assessment order-Revision is justified. [S. 143(3)] 2740
Held that there was an adjustment of prior period expenses in the statement showing reconciliation of equity from the previous generally accepted accounting principles to Indian Accounting Standards. This adjustment in the balance-sheet and not in the profit and loss account needed further verification. Prima facie, the Principal Commissioner

had sufficient grounds to form an opinion that the order had been passed by the Assessing Officer without making inquiries or verification which should have been made. Considering the facts and the quantum at issue, the Principal Commissioner had properly assumed jurisdiction under section 263. That that the Principal Commissioner had not disallowed the claim but had set aside the assessment order passed by the Assessing Officer and directed him to pass a fresh assessment order to the extent of the issue, after allowing adequate opportunity of being heard to the assessee. The order of the Principal Commissioner is affirmed. (AY. 2018-19)
Inductotherm (India) P. Ltd. v. PCIT (2024)112 ITR 59 (SN)(Ahd)(Trib)

2741 **S. 263 : Commissioner-Revision of orders prejudicial to revenue-Cash deposits-Share capital-share premium-Reassessment –Limitation-Relevant date for purpose of determination of period of limitation-Date of original assessment order and not date of reassessment order-Revision order is quashed. [S. 68, 147, 148]**
Assessing Officer reopened assessment on ground that assessee had made certain cash deposits in its bank account which were not explained and reconciled in its books of account. The Assessing Officer passed an order without making any addition with respect to cash deposits. Commissioner invoked revision under section 263 on ground that Assessing Officer failed to carry out necessary verification on two issues, viz., share capital/premium and unsecured loans received by assessee. On appeal the Tribunal held that when Assessing Officer had not made any addition with respect to cash deposits made in bank account of assessee, i. e. issue, based on which, its case was reopened by him under section 147, Assessing Officer was divested of his jurisdiction from making any further independent addition /disallowance. Therefore, Pr. Commissioner could not have held re-assessment order so passed as erroneous for reason that he had failed to carry out verification on such independent issues viz. share capital/premium and unsecured loans received by assessee which were not subject matter of reassessment proceedings. Tribunal also held that where subject matter of re-assessment is distinct and different from issues regarding which revision jurisdiction under section 263 has been invoked, then in that case relevant date for purpose of determination of period of limitation for exercising powers under section 263 would be date of original assessment order and not date of reassessment order. (AY. 2014-15)
Hotel Babylon Continental (P.) Ltd. v. PCIT (2024) 208 ITD 1 (Raipur)(Trib.)

2742 **S. 263 : Commissioner-Revision of orders prejudicial to revenue-Search and seizure-Cash credits-Entries of unsecured loans-Failure to make necessary enquiries in reassessment proceedings-Assessment order is invalid-Revision order is invalid. [S. 68, 147, 153C]**
During search operation conducted in case of 'H' Group, a copy of ledger account of assessee was seized which provided details of unsecured loans. The assessee's case was reopened. In response to reopening notice, assessee filed return. Assessing Officer completed assessment under section 147 wherein returned income was accepted. Thereafter, Principal Commissioner invoked revisionary proceedings on ground that Assessing Officer failed to make necessary inquiries on issue of unexplained cash transactions which were recorded in assessee's ledger account seized during search. On

appeal the Tribunal held that since whole case was framed based on material found during search, course of action was required to be taken under section 153C and not under section 148. Therefore, Assessing Officer had erred in invoking reassessment proceedings under section 147 and as such, subsequent cause of action based on invalid order was without jurisdiction Revision order is quashed. (AY. 2017-18)
Jagjeet Singh. v. DCIT (2024) 208 ITD 250 (Amritsar) (Trib.)

S. 263 : Commissioner-Revision of orders prejudicial to revenue –Cash credits – Pendency of appeal before CIT(A)-Proposal sent by Additional CIT-No independent application of mind-Revision order is quashed. [S. 44AD, 68, 143(3)] 2743
On basis of information from Bureau of Investigation, Commercial taxes, that there were certain deposits in bank account of assessee in name of his proprietary concern, Assessing Officer reopened assessment in both assessment years. Assessee submitted that he had not opened any of Bank accounts and that might have been done by some unknown person by using fake identity of assessee. Assessing Officer was not satisfied with submissions of assessee and he was of view that said sum was to be treated as unaccounted sales of assessee and he assumed this figure as turnover of assessee and estimated profit at 8% and estimated unexplained investment. Appeal was filed against said assessment order. Additional Commissioner forwarded a proposal to CIT for initiating proceedings under section 263 against assessee. CIT issued a notice under section 263 and observed that alleged credit of sales ought to be treated as unexplained cash credit against name of assessee and Assessing Officer had erred in treating it as a gross turnover. CIT passed the Revision order. On appeal the Tribunal held that since Commissioner had just reproduced proposal sent by Additional CIT and there was no independent application of mind at his end for taking cognizance under section 263, order passed under section 263 is quashed, particularly when said issue was pending in appeal before Commissioner (Appeals). (AY. 2015-16, 2016-17)
Rajesh Kumar Jalan v. PCIT (2024) 113 ITR 188 / 208 ITD 349 (Kol) (Trib.)

S. 263 : Commissioner-Revision of orders prejudicial to revenue –Capital gains-Penny stock-Failure to make enquires-Revision is held to be valid. [S. 45, 147, 148] 2744
The assessment was reopened under Section 147 and assessment was finalized, by accepting returned income. PCIT held that assessee undertook transaction of trading in shares of ECL, a penny stock and modus operandi of whole business was to facilitate introduction of unaccounted income in form of exempt capital gain or short term capital loss, over years. PCIT held that Assessing Officer failed to analyze documents to verify genuineness of transaction and set-aside assessment order as being erroneous and prejudicial to interest of Revenue. Tribunal held that since assessee had dealt in shares relating to penny stock companies and it had neither declared Long Term Capital Losses on sale of shares of ECL nor declared LTCG on sale of shares of Saya assessee had not filed it's return of income correctly. Since Assessing Officer failed to enquire into these important aspects which were both not reflecting in return of income, assessment order passed by Assessing Officer is erroneous in so far as prejudicial to interest of Revenue. (AY. 2016-17)
Suresh Kantilal Thakkar v. PCIT (2024) 208 ITD 395/232 TTJ 659 (Ahd) (Trib.)

2745 **S. 263 : Commissioner-Revision of orders prejudicial to revenue-Corporate social responsibility (CSR)-Allowed deduction under Section 80G-AO's view is backed by various decisions of Tribunal-Assessment order can not be treated as erroneous and prejudicial to interest of revenue. [S. 37(1), 80G, 143(3), Companies Act, S. 135]**
Assessee incurred expenditure on account of Corporate Social Responsibility (CSR). Assessee in its books disallowed said expenditure. However, expenditure included some donations which were eligible for deduction under section 80G. Assessee claimed deduction under section 80G in respect of such donations made under CSR. Assessing Officer examined assessee's claim of deduction under section 80G and accepted same. Principal Commissioner invoked revisional jurisdiction under section 263 on ground that claim of deduction under section 80G is not allowable to assessee as said claim had been made on expenditure incurred towards CSR. On appeal the Tribunal held that Tribunal in past had considered this issue in various cases and had been consistently holding that CSR expenses which were mandatory under section 135 of Companies Act were not allowable as deduction under section 37(1) but if any part of CSR contribution that was otherwise eligible for deduction under Chapter VI-A there was no bar on companies to claim same as deduction under section 80G. Merely for reason that Principal Commissioner did not agree with view taken by Assessing Officer, assessment order did not become erroneous. Revision order is quashed. (AY. 2016-17)
American Express (India) P. Ltd. v. ACIT (2024) 208 ITD 564 (Delhi) (Trib.)

2746 **S. 263 : Commissioner-Revision of orders prejudicial to revenue –Cash deposits-Demonetisation-Sales-Retail sale of petroleum products, customer-specific records not practicable-Assessing Officer having discretion in examination of transactions and level of inquiry-Audit report available for download and examination-Assessing Officer's choice not to download and file copy for record not prejudicial to interests of revenue-Order is not erroneous-Cash gift from mother-Failure to explain the source-Creditors-Confirmations incomplete and deficient PCIT is justified in setting aside assessment order. [S. 68, 147, 148]**
Tribunal held that cash deposits during Demonetisation period in respect of retail sale of petroleum products revision is not justified since it is not practicable to maintain customer-specific records. When the Assessing Officer having discretion in examination of transactions and level of inquiry to be conduted, order cannot be erroneous. As regards Audit report available for download and examination. Assessing Officer's choice not to download and file copy for record does not make the order prejudicial to interests of revenue. As regards cash gift from mother and the assessee failed to explain the source and creditors confirmations were incomplete and deficient. PCIT is justified in setting aside assessment order. (AY. 2017-18)
Ravi Sher Singh Toor v. PCIT (2024) 110 ITR 218 (Chd)(Trib)

2747 **S. 263 : Commissioner-Revision of orders prejudicial to revenue-Survey-Surrender letter-Business income-No findings were recorded by the Principal Commissioner how the deeming provisions were applicable and the order passed by the Assessing Officer was erroneous-Survey operation at business premises alone cannot be basis for revision. [S. 68, 699, 69B, 69C 69D, 115BBE, 133A]**
Held, that there was a difference between undisclosed income and unexplained income which was apparently absent on the face of the show-cause notice. The very basis of

invocation of jurisdiction under section 263 suffered from serious fallacies, that the unexplained income found and surrendered during the course of survey proceedings was sought to be brought to tax straightway under section 115BBE of the Act. There were no findings recorded by the Principal Commissioner whether any explanation was called for from the assessee in terms of these undisclosed transactions either during the course of survey proceedings or during the course of assessment proceedings and how the explanation offered was not found acceptable to the Principal Commissioner. There was no inquiry or investigation which had been conducted by the Principal Commissioner and there was no positive evidence brought on record why the deeming provision read with section 115BBE of the Act were applicable. The assessee had been asked specific questions not only regarding the discrepancy found during the course of survey and also the nature and source thereof during the course of survey. The nature of advances was unaccounted business advances and source of income surrendered was the assessee's share of diagnostic laboratory fees received from S, who ran the diagnostic lab from the business premises of the assessee and had shared 70 per cent. of laboratory fees with the assessee which remained unaccounted and undisclosed at the time of survey. Though these transactions were not recorded at the time of survey qualifying as unrecorded transactions, the assessee had provided the necessary explanation about the nature and source of the unrecorded transactions and the necessary nexus with the assessee's business had been established. Thus, it could not be said that these were unexplained transactions. The Assessing Officer had duly taken cognisance of the findings of the survey team, the documents found during the course of survey, the statement of S, the surrender letter and the return of income and after examination thereof and due application of mind, the income had been rightly assessed under the head "Business income". There were no findings recorded by the Principal Commissioner how the deeming provisions were applicable and the order passed by the Assessing Officer was erroneous. Therefore, the order passed by the Principal Commissioner was set aside and that of the Assessing Officer restored. (AY. 2017-18)
Ravinder Kumar Bansal v. PCIT (2024) 110 ITR 86/232 TTJ 621 (Chd)(Trib)

S. 263 : Commissioner-Revision of orders prejudicial to revenue –Discrepancy in sales promotion expenses-Clarified by assessee-Plausible view after relevant inquiries-Revision is not valid. [S. 37(1), 143(3), Explanation 2 to S. 263] 2748

Allowing the appeal the Court held that it was clear that the assessee was confronted with all the facets of the claim and had furnished the requisite information based on which the Assessing Officer had completed the assessment. The assessee had clarified the confusion of the figures noted considering which the Principal Commissioner did not establish the order to be prejudicial. The term "records" not only means records available with the Income-tax Officer at the time of passing the assessment order but also includes records available with the Commissioner at the time of passing his order. The Assessing Officer had called for the details on as many as nine aspects and had examined the issues before allowing the assessee's claim. Once the Assessing Officer, based on the details placed on record, takes up a plausible view of the matter, it could not be subjected to revision under section 263 even in light of the revised Explanation 2 thereto. The jurisdiction under section 263 could not be invoked for making short enquiries or go into the process of assessment again and again merely on the basis

that more inquiry ought to have been conducted to find something. As the Assessing Officer had passed the assessment order after relevant inquiries, the order passed by the Principal Commissioner was not in accordance with law. Revision order is quashed. (AY. 2018-19)
Sourabh Sharma v. PCIT (2024) 110 ITR 677 (Jaipur)(Trib)

2749 **S. 263 : Commissioner-Revision of orders prejudicial to revenue-Revision Lease equalisation charges-Method of accounting-Following Accounting Standard-19 in respect of rent and lease charges paid-Debiting lease equalisation charges to profit and loss account, but adding it back to total income-Assessing Officer carrying out required enquiries-Assessment order is not erroneous and prejudicial to revenue. [S. 145, Accounting Standard-19]**
Held that the Assessing Officer had verified the issue of lease equalisation charges and its treatment in the books of account and computation of income during the course of assessment proceedings and after considering the assessee's submissions had accepted the claim of the assessee. The Assessing Officer had carried out required enquiries in light of relevant facts submitted by the assessee in respect of lease equalisation charges. The Principal Commissioner had erred in coming to the conclusion that the assessment order was erroneous and prejudicial to the interests of the Revenue. (AY. 2018-19)
FCA Engineering India P. Ltd. v. PCIT (2024)110 ITR 61 (SN)(Chennai)(Trib)

2750 **S. 263 : Commissioner-Revision of orders prejudicial to revenue –Assessing Officer has properly verified issues during original assessment-Expenditure on exempt income-Query raised in the course of assessment proceedings-Reply filed-Employment of new employees-In continuation of earlier years-Revision is not valid-Revision order is quashed-Revision on issue not included in notice-Revision is beyond scope of notice and not permissible. [S. 14A,80JJA, 143(3), R. 8D]]**
Held that when the th Assessing Officer in the original assessment order had taken cognisance of all the aspects and no case was made out by the Department that the assessment order was erroneous and prejudicial to the interests of the Revenue. For the disallowance of expenditure on exempt income, the assessee had not taken into account the equity shares investment as that has not yielded any dividend income in the particular year and, thus, the Principal Commissioner should have taken cognisance of this aspect. The Assessing Officer had categorically raised the query relating to disallowances and the assessee had given the details of disallowances under section 14A of the Act including the relevant monthly closing and opening balance of investment as well as the monthly closing details. The assessee had claimed the deduction @ 30% under section 80JJAA of the Act, which was in continuation of the earlier year in respect of employees employed in the earlier year and this was allowed by the section. The assessee had not claimed this as there was a loss due to fire. Revision order is bad in law. As regards the issue of employees' compensation the scope of section 263 notice was expanded by the Principal Commissioner at the time of passing the order and the assessee was not confronted or given opportunity to present its case on the said issue. This issue was beyond the scope of notice and is not admissible for revision. (AY. 2018-19)
GSP Crop Science P. Ltd. v. PCIT (2024)110 ITR 24 (SN)(Ahd)(Trib)

S. 263 : Commissioner-Revision of orders prejudicial to revenue –Merely because explanations and documents not filed before Assessing Officer during assessment proceedings-Revision is not valid. 2751

Allowing the appeal the Tribunal held that the authorities can exercise revisionary powers only on fulfilment of the essential conditions of finding error in the order sought to be revised and the error being such as causing prejudice to the Revenue. In the absence of any of the two conditions the power of revision under section 263 of the Act cannot be exercised. Having found no error in the assessment order himself, there was possibly no scope of the issue being examined again by the Assessing Officer, an officer junior in rank to the Principal Commissioner. There was no case therefore, for the Principal Commissioner to exercise any revisionary power under section 263 of the Act on the issue. The order passed by the Principal Commissioner under section 263 of the Act is not sustainable in law. (AY. 2013-14)

Madhya Gujarat Vij Co. Ltd. v. PCIT (2024)110 ITR 21 (SN)(Ahd)(Trib)

S. 263 : Commissioner-Revision of orders prejudicial to revenue-Capital gains-Short-term capital loss-Unquoted equity shares-Valuation of market value is not in accordance with Rule11UA(1)(c)-Control and management of companies are with related parties-Transactions are not at arm's length-Revision is justified. [S. 263, Explanation 2, R. 11UA(1), Companies Act, 2013, S. 53] 2752

Held that the Assessing Officer had not applied his mind to the relevant facts in right perspective of law or carried out required enquiries in respect of short-term capital loss declared by the assessee. To this extent, the assessment order passed by the Assessing Officer was erroneous. Tribunal also held that since, the transactions between the assessee and the eight companies were not at arm's length price the resultant loss declared by the assessee from transfer of equity shares could at best be treated as structured transactions to derive undue benefit of short-term capital loss. The Assessing Officer having failed to carry out the required enquiries he ought to have carried out in the light of Explanation 2 to section 263 of the Act, thus, the assessment order passed by the Assessing Officer under section 143(3) of the Act was prejudicial to the interests of the Revenue. Therefore, the findings of the Principal Commissioner were proper. (AY. 2017-18)

Mercantile Ventures Ltd. v. ACIT (2024)110 ITR 41 (SN)(Chennai)(Trib)

S. 263 : Commissioner-Revision of orders prejudicial to revenue-Capital gains-Investment of gains in residential house within time specified-Purchase of land with intention of constructing house-Time of three years from date of transfer of original asset allowed-Revision on ground that purchase was beyond two years allowed for purchase of house is not proper. [S. 45, 54F, 143(3)] 2753

Held that according to section 54F of the Act, time of three years is provided to the assessee for construction of a house property for claiming exemption of capital gains under section. The exercise of revisionary power by the Principal Commissioner was based on an incorrect interpretation of the provisions of law on the issue. Accordingly the revision order is quashed (AY. 2018-19)

Viral Rajendra Patel v. PCIT (2024)110 ITR 79 (SN)(Ahd)(Trib)

2754 **S. 263 : Commissioner-Revision of orders prejudicial to revenue-Capital gains-Sale of immovable property and purchase or construction of new residential property-Information required under notices, and replies submitted leaving no doubt as to the adequacy of inquiry caused by AO-No substance to conclude assessment order is erroneous-The revision order is not sustainable. [S. 54]**

Held that details required and obtained by the AO by way of notices clearly showed that the AO had caused sufficient inquiry on the aspect of the sale of the residential house. No intervening facts between the sale deeds were brought on record by the Pr. CIT to reach a different conclusion that what was sold by the assessee was not what he acquired. On his inquiries and perusal of the sale deeds, the AO satisfied himself with the state of affairs obtained through those documents. The Pr. CIT also did not cause any inquiry as to the event after the sale deed to entertain any doubt about such physical features. There was no substance in the revision order to conclude that the assessment order was erroneous. To invoke the jurisdiction u/s. 263, the twin conditions of error in the order and also prejudice to the interests of the Revenue must be established independently. Since the assessment order was not erroneous, the revision order was not sustainable. (AY. 2015-16)

Ahmed Alam Khan v. Dy. CIT (2024) 111 ITR 34 (SN) (Hyd.)(Trib.)

2755 **S. 263 : Commissioner-Revision of orders prejudicial to revenue AO conducted a proper inquiry and after proper application of mind-taking permissible view-PCIT was wrong in holding the order of AO erroneous and prejudicial to the interests of revenue. [115JB, 143(3), 144C]**

The assessee initially declared a total income under the normal provisions and book profits u/s. 115JB of the Act. After a revision in 2015, the declared income under the normal provisions became nil while book profits remained unchanged. The assessment was completed, and later, the Pr. CIT found the assessment order to be erroneous and prejudicial to the interests of the Revenue and thus directed the AO to frame a fresh assessment order.

Held that the AO did conduct proper inquiries during the original assessment proceedings u/s. 143(3) and 144C of the Act. Hence, the assessment order was not prejudicial to the interests of the Revenue. (AY. 2003-04)

SREI Infrastructure Finance Ltd. v. PCIT (2024) 111 ITR 95 (Kol)(Trib.)

2756 **S. 263 : Commissioner-Revision of orders prejudicial to revenue-Limited Scrutiny-The other issues related to revision were duly scrutinised and accepted by the AO by taking into consideration full details filed by the assessee-Revision order is quashed. [S. 14A, 36(1(iii), 80JJAA(b)]**

The return filed by the assessee was subjected to limited scrutiny on three issues A) deductions claimed under Chapter VI-A; B) issue of share capital and C) Refund claimed. The assessee furnished all related details. The assessee filed complete details in respect of deduction claimed u/s. 80JJAA, share capital issued. The assessment was completed u/s. 143(3) of the Act after taking into consideration details filed by the assessee. Subsequently, CIT sought to revise the assessment on the ground that the A. O. had not properly examined the four issues during the assessment i. e. a) Deduction

of Rs. 99.23 lakhs claimed u/s. 80JJAA b) issue of non-cumulative preference shares c) Disallowance of interest u/s. 36(1)(iii) and d) disallowance u/s. 14A of the Act.
The assessee challenged the revisional order passed by the CIT before the Tribunal. The DR and Tribunal accepted the contention of the assessee that revision in respect of disallowance of interest u/s. 36(1)(iii) and 14A of the Act could not be made as these issues could not be examined by the A. O. under the limited scrutiny without the permission of the higher authority.
In respect of deduction u/s. 80JJAA of the Act and issue of share capital, the assessee demonstrated that the assessment was completed based on the submission of details called for and that the CIT, without pointing out any defect, infirmity or inadequacy, merely directed the A. O. to revise the assessment. In the circumstances, the Tribunal held that the A. O. had caused adequate enquiries and the CIT had not pointed out what additional enquiries were required to be made by the A. O. The Tribunal quashed the order passed by the CIT by holding that simply holding that the Assessing Officer was required to make more enquiries is not a valid ground to hold assessment order as erroneous and prejudicial to the interests of the Revenue. (AY. 2018-19)
V-con Integrated Solutions P. Ltd. v. PCIT (2024) 112 ITR 118 (Chd) (Trib)

S. 263 : Commissioner – Revision of orders prejudicial to revenue – Assessment order which is nullity in law – Cannot be revised. [S. 132A, 143(3)] 2757
Rs. 20 Lakhs in old currency was seized by the ITO during municipal elections. Scrutiny notice u/s 143(2) was issued for assessment. After assessment, the order passed was called for revision by the PCIT u/s 263. The assessee contended that when a requisition has been made under s.132A of the Act, the jurisdiction to complete the assessment is governed by the provisions of Section 153A of the Act. The normal provisions of assessment under s.143(3) of the Act would not apply in the case where action has been taken either under s.132 of the Act or under s.132A of the Act.
The Tribunal held that the order which is a nullity in law and has no legal effect, cannot be revised under s.263 of the Act. The assessment order being infructuous in law, the consequential action under s.263 of the Act is equally infructuous. The assessment, in the instant case, has not been framed under s.153A of the Act despite requisition under s.132A of the Act. The error committed by the AO in contravention of express provisions of Act is incurable and has rendered the assessment void ab initio and a nullity in law. Such an assessment order being devoid of any legal effect could not be revised. The revisional order is accordingly quashed and set aside. (AY. 2017-18)
Piyush Kumar Choubey v. P CIT (2023) 221 TTJ 17 (UO) (Raipur) (Trib)

S. 263 : Commissioner-Revision of orders prejudicial to revenue –Income from other sources-Compensation for acquisition of agricultural land-Interest on compensation-Two views possible-Revision order is quashed. [S. 4, 56(2)(vii), 143(3), Land Acquisition Act, 1894,S. 28] 2758
Held that the order of the Assessing Officer was based on the decision of the Supreme Court in *CIT v. Ghanshyam (HUF) (2009) 315 ITR 1 (SC)* on the issue of taxability of interest received by the assessee under section 28 of the Land Acquisition Act, 1894. The order could at best be said to be a debatable issue on which two views were

possible and the Assessing Officer accepted one of the views. In this view of the matter too, the Principal Commissioner could not assume revisional jurisdiction. (AY. 2018-19)
Jai Parkash v. PCIT (2024)111 ITR 80 (SN)(Delhi)(Trib)

2759 **S. 263 : Commissioner-Revision of orders prejudicial to revenue-Revision-Possible-Commissioner giving directions to Assessing Officer without pointing out how view taken by Assessing Officer was wrong-Revision is quashed. [S. 142(1), 143(3)]**
Held that the revisionary jurisdiction was exercised in respect of five issues but in the set aside proceedings, the Assessing Officer accepted the reply of the assessee on three issues whereas only two issues were added to the income of the assessee. During the assessment proceedings, the Assessing Officer had specifically called for information after issuing notice under section 142(1) of the Act and the assessee specifically replied and offered its explanation why these items did not warrant disallowance or addition and it was accepted by the Assessing Officer. The Assessing Officer had taken a plausible view which also appeared to be correct and therefore the Principal Commissioner could not invoke the jurisdiction under section 263 of the Act to substitute his view for that of the Assessing Officer. The revisionary jurisdiction had been invalidly invoked and consequently the revision jurisdiction exercised by the Principal Commissioner is quashed. The Principal Commissioner had simply exercised jurisdiction by giving directions to the Assessing Officer without pointing out how the view taken by the Assessing Officer was wrong thereby rendering the assessment passed by him erroneous and prejudicial to the interests of the Revenue. (AY. 2013-14)
Linde India Ltd. v. PCIT (2024)111 ITR 91 (SN)(Kol)(Trib)

2760 **S. 263 : Commissioner-Revision of orders prejudicial to revenue –Dividend-Allocation of expenses-Order of Assessing Officer is not erroneous –Limited scrutiny-Enquiry as to source of investment in mutual fund units neither envisaged nor called for Revision order is quashed. [S. 10(35), 142(1), 143(3)]**
Held that the assessee submitted the details of sale and purchase of shares and securities transactions along with proof of transaction ledger and dematerialised trading account. It was thus abundantly clear that the discrepancy as per show-cause notice issued by the Principal Commissioner was reconciled by the assessee by bringing on record the documentary evidence filed before the Assessing Officer. The Principal Commissioner denied giving credence to them on the flimsy ground that these were not found available on the assessment record. For non-availability of the documentary evidence filed by the assessee in assessment record, the assessee could not be faulted and it would be against the principles of natural justice to draw adverse inference therefor. That the direction of the Principal Commissioner to the Assessing Officer to reconcile the information on purchase of mutual fund units and to examine the sources of investment therein was beyond reason since it was not an issue selected for scrutiny. The details of purchase and sale of mutual fund units were furnished in the assessee's reply to the notice under section 142(1) of the Act issued by the Assessing Officer. Enquiry as to the source of investment in mutual fund units was neither envisaged nor called for. Revision order is quashed. (AY. 2017-18)
Sampark Management Consultancy LLP v. PCIT (2024)111 ITR 18 (SN)/ 230 TTJ 735/ 241 DTR 84 (Delhi) (Trib)

S. 263 : Commissioner-Revision of orders prejudicial to revenue –Limited scrutiny-Declared net profit from business more than 8 Per Cent. of total turnover-Furnished all details in the course of assessment proceedings-Revision is not justified. [S. 44AD, 143(3)] 2761

Held that the Principal Commissioner's main observation was that the assessee had not disclosed its total turnover and had not claimed the profit as per the actual calculations but this was not correct. The assessee at the stage of assessment order had given all the details including total turnover which was summarised and put together and gave the profit quantification of the total turnover in terms of section 44AD of the Act and, therefore, the invocation of section 263 of the Act was not justifiable when the assessee has given all the details. The assessment order was not erroneous or prejudicial to the interests of the Revenue and, therefore, the order passed under section 263 of the Act was not justified. (AY. 2015-16)

Shail P. Shah (HUF) v. PCIT (2024)111 ITR 8 (SN)(Ahd) (Trib)

S. 263: Commissioner-Revision of orders prejudicial to revenue-Assessment order passed after making necessary inquiries-Held, revision proceedings cannot be initiated simply because PCIT was of the opinion that further inquiries should have been made on the issue. [S. 143(3)] 2762

The ITAT observed that the AO had passed the assessment order after making necessary inquiries, in respect of which replies were duly filed by the Assessee from time to time furnishing the requisite information. Revision proceedings were initiated by the PCIT because he was of the opinion that sufficient inquiries were not conducted by the AO. The ITAT held that merely because the assessment order is not a detailed order that itself, does not mean that the AO had not made enquiries in this respect. Further, the Pr. CIT had not pointed out any error or discrepancy in the explanations and details furnished by the Assessee, neither did he examine such evidence or raise any counter questions to the Assessee on the relevant points and he also did not consider the submission of the Assessee furnished in reply to the show-cause notice. Therefore, the PCIT was not justified in setting aside the assessment order. Accordingly, the impugned order of PCIT was set aside. (AY. 2018-19)

Venerable Advertising P. Ltd. v. PCIT [2024] 109 ITR 81 (SN.) (Kol) (Trib)

Editorial: Amritrashi Infra (P) Ltd. v. PR. CIT in ITA No 838/Kol/2019; Assessment Year 2012-13; order dt. 12/08/2020; Narayan Tatu Rane v. ITO [2016] 70 taxmann. com 227 (Mum.) (Trib.) Followed.

S. 263 : Commissioner-Revision of orders prejudicial to revenue-Salary-Perquisite-Difference in salary as per Form No. 16 and salary disclosed in ITR-Amount received on VRS-The Assessing Officer had not conducted proper inquiries in respect of claims made by assesseee-Revision is held to be justified. [S. 10(10C),10(10CC), 10(10B), 16, 17(2), 40(a)(v), Form No. 16] 2763

Assessment was completed under section 143(3) and returned income was accepted. Pr. Commissioner initiated proceeding under section 263 and held that order of Assessing Officer was erroneous and pre-judicial to interest of revenue, as certain exemptions were wrongly allowed, contrary to provisions of law, in respect of salary income. Accordingly,

the assessment was set-aside to Assessing Officer with a direction to pass fresh assessment order de novo. On appeal the Tribunal held that since Assessing Officer had not conducted proper inquiries in respect of claims as made in return of income, order was rightly treated as erroneous and pre-judicial to interest of revenue. Huge difference was found in the salary as per per Form 16 and the salary disclosed in their respective ITR. Revision order is up held. (AY. 2018-19)
Mafatbhai Bhikhabhai Parmar v. PCIT (2024) 207 ITD 316/231 TTJ 85/240 DTR 338 (Ahd) (Trib.)

2764 **S. 263 : Commissioner-Revision of orders prejudicial to revenue-Co-Operative society-Interest income-Income from other sources-Interest income derived from fixed deposits with cooperative banks-Entitle to deductions. [S. 56, 80P(2)(d)]**
Assessee is a co-operative society. During year, it claimed deduction under section 80P(2)(d) in respect of an interest income earned on FDs kept by it with a co-operative bank. Assessing Officer allowed same. PCIT invoked revision jurisdiction on ground that interest income earned by assessee-society on investment with banks was not eligible for deduction under section 80P(2)(a)(i) and should be taxed under section 56. On appeal the Tribunal held that the assessee society, being a cooperative society, is entitled to exemption under section 80P(2)(d), in respect of interest income derived from FDs with cooperative banks. Since Assessing Officer had duly applied his mind to issue of assessee's claim of deduction under section 80P and only thereafter he had allowed it while passing assessment order, Pr. CIT had erred in invoking powers under section 263 and setting aside assessment order. (AY. 2012-13, 2013-14)
Mullanpur Garibdas Co-operative Multipurpose Society v. PCIT (2024) 114 ITR 646 / 207 ITD 454 /229 TTJ 847/ 238 DTR 153 (Chd) (Trib.)

2765 **S. 263 : Commissioner-Revision of orders prejudicial to revenue –Cash credits-Bank deposits-Capital gain-Purchase of agricultural after due date of filing of return-Reassessment proceedings initiated-No addition was made-Order is not erroneous and prejudicial to interest of revenue on issue of capital gain. [S. 45, 54B, 68, 139(1), 147, 148]**
Assessing Officer reopened assessment of assessee to examine cash deposit of certain amount in bank account. Assessing Officer inquired about cash deposit and he was satisfied with explanation given by assessee and did not make any addition on issue of cash deposit. Thereafter, Assessing Officer dealt with issue of sale of agricultural land sold by assessee and proceeded to compute capital gain on sale of agricultural land at nil. Commissioner invoked section 263 on ground that Assessing Officer should not have allowed exemption under section 54B to assessee on investment in agricultural lands purchased after due date of filing return. On appeal Tribunal held that since Assessing Officer did not make any addition for reasons recorded at time of issue of notice under section 148, he could not have made any addition on account of capital gain in assessment proceedings under section 147/148 and, thus, assessment order was not erroneous and prejudicial to interest of revenue. (AY. 2009-10)
Ashok Kumar v. PCIT (2024) 207 ITD 583 (Delhi) (Trib.)

S. 263 : Commissioner-Revision of orders prejudicial to revenue-Failure to verify certificate of no deduction of tax at source or verify details-Late deposit of Employees' contribution to Provident Fund and employees' State Insurance-Revision is justified. [S. 36((1))(va), 43B, 197] 2766

Held that failure to verify certificate of no deduction of tax at source or verify details, late deposit of Employees' contribution to Provident Fund and employees' State Insurance. Revision is justified. (AY. 2014-15)

Sandeep Jagdishchandra Dave v. PCIT (2024)109 ITR 77 (SN)(Ahd) (Trib)

S. 263 : Commissioner-Revision of orders prejudicial to revenue Order was not available on portal Delay is condoned-Cash deposited in bank accounts-Assessing Officer is directed to verify source of cash available with assessee for deposits, if Assessing Officer is satisfied with explanation no additions were to be made-Directed to decide in accordance with law. [S. 143(3), 254(1)] 2767

The Tribunal condoned the delay in filing of appeal. The Tribunal held that the questionnaire issued under section 142 had not been placed on record. It was not discernible whether the Assessing Officer had verified the aspect regarding the source of cash available with the assessee for making deposits in two bank accounts, as narrated by the Principal Commissioner. Though the assessee had provided detailed records in tabulated form, including bank passbooks of the two banks, the cash available with the assessee and host of details running into more than 50 pages, neither had the Assessing Officer examined this aspect during the assessment proceedings nor the Principal Commissioner. Thus, the Assessing Officer was directed to verify the source of cash available with the assessee for deposits in the two bank accounts. If the Assessing Officer was satisfied with the explanation of the assessee, no additions were to be made. However, if unsatisfied, the alleged cash deposits were to be treated in accordance with the law. (AY. 2017-18)

Sahebganj No. 1 Anchalik Samabay Krishi Unnayan Samity Ltd. v. ITO (2024)109 ITR 445 (Kol)(Trib)

S. 263 : Commissioner-Revision of orders prejudicial to revenue-Specific notice-Failure to file required information –Share premium-Cash deposit-Demonetisation-bad debt-Revision is justified. [S. 36(1)(vii), (36(2), 56(2)(vii), 143(3)] 2768

The Principal Commissioner initiated revision proceedings on the ground of failure by the Assessing Officer to consider three issues : the increase in share premium in light of provisions of section 56(2)(vii) of the Act, cash deposits made during the demonetisation period and bad and doubtful debts. On appeal the Tribunal held that although the assessee had received huge share premium, the Assessing Officer had failed to examine the issue of increase in share premium in light of provisions of section 56(2)(vii) of the Act by calling for specific details with regard to the price charged by the assessee and valuation of shares. He had simply accepted the explanation of the assessee without any verification with regard to price determined for allotment of shares. As regards huge cash deposits during demonetisation period, the assessee had deposited a sum of Rs. 19. 53 crores in various bank accounts but the Assessing Officer had not verified the issue in light of standard operating procedure issued by the Central Board of Direct Taxes for verification of huge cash deposits during that period. Similarly, the claim of

deduction for provision for bad and doubtful debts written off was not verified with reference to provisions of section 36(1)(vii) read with section 36(2) of the Act. The Assessing Officer had issued notice under section 142(1) in response to which the assessee had not furnished any details called for. The Assessing Officer had completed the assessment on the basis of available information on record and accepted the income declared by the assessee for the relevant assessment year. Therefore, the assessment order passed by the Assessing Officer was erroneous in so far as it was prejudicial to the interests of the Revenue, on the issue of increase in share premium, cash deposits during demonetisation period and deduction claimed towards bad and doubtful debts. The Principal Commissioner had rightly set aside the assessment order passed by the Assessing Officer. (AY. 2017-18)

Varam Capital P. Ltd. v. PCIT (2024)109 ITR 547 (Chennai) (Trib)

2769 **S. 263 : Commissioner-Revision of orders prejudicial to revenue –Cash credits-Share capital-Share premium-Facts examined by Assessing Officer-Not a case of no enquiry or lack of enquiry-Order is neither erroneous nor prejudicial to interests of revenue-Revision order is set aside-Revision jurisdiction cannot be exercised on same issue for second time. [S. 68, 133(6), 143(3)]**

Quashing the revision order the Tribunal held that in the proceedings pursuant to the first revision notice the Assessing Officer deleted the addition made under section 68 of the Act in respect of share capital and share premium and assessed the income at Rs. 1,240. Before deleting the addition, the Assessing Officer called for the necessary details from the assessee and also from the shareholders under section 133(6) of the Act which were fully replied by filing the details as requisitioned. The Assessing Officer gave a detailed finding in the assessment order for deleting the addition after carrying out detailed examination and enquiry into the matter. This was not a case of no enquiry or lack of enquiry as the Assessing Officer had made an enquiry and taken a view on the basis of examination of the evidence furnished by the assessee as well as by the subscribers. The twin conditions for revision were not satisfied as the order was neither erroneous nor prejudicial to the interests of the Revenue as all the facts were examined by the Assessing Officer on the basis of details and explanation of the assessee before the Assessing Officer and he had taken a correct view based on his examination of records furnished by the assessee as well as by the subscribers. The Tribunal also held that revisionary jurisdiction under section. 263 of the Act is not available on the same issue for the second time. (AY. 2013-14)

Anjaniputra Nirman P. Ltd. v. PCIT (2024)109 ITR 4 (SN)(Kol)(Trib)

2770 **S. 263 : Commissioner-Revision of orders prejudicial to revenue –Death of assessee-No specific statutory provision under Income tax law which require legal heirs to intimate department about death of assessee-Assessment is not valid-Invalid assessment order could not be revised. [S. 50C, 143(3)]**

Assessing Officer received information that assessee had sold an immovable property and observed that there was a difference between sale value of property as declared by assessee and as adopted by stamp duty authority. He reopened assessment and thereafter, assessment order was passed and additions were made on account of LTCG. Principal Commissioner invoked revisionary proceedings on ground that Assessing

Officer had not ascertained cost and year of acquisition of capital asset. On appeal the Tribunal held that the assessee had expired at time when assessment order was framed in name of assessee. In absence of any specific statutory provision under Income Tax law which requires legal heirs to intimate Income Tax Department about death of assessee, assessment order could not be held to be valid only for reason that legal heirs of deceased assessee had not informed about death of assessee. Since original assessment order framed in name of a deceased person was not valid in eyes of law, same could not be revised by taking recourse to section 263 proceedings and thus order passed under section 263 was to be set aside. (AY. 2007-08)
Bhavnaben K. Punjani (Smt.) v. PCIT (2024) 206 ITD 30 (Rajkot) (Trib.)

S. 263 : Commissioner-Revision of orders prejudicial to revenue –Capital gains-Interest-Enhanced compensation on compulsory acquisition Act 1894-Debatable-Revision is not valid. [S. 10(37), 143(3), Land Acquisition Act, 1894, S. 28] 2771

Assessee received interest under section 28 on enhanced compensation for compulsory acquisition of his agricultural land and claimed that said interest is a part of enhanced value of land and same is exempt under section 10(37). Assessing Officer accepted claim of assessee and passed an assessment order. PCIT invoked revision under section 263 on ground that Assessing Officer should have taken into consideration binding decision of High Court in *Mahendu Pal Narang v. CBDT [2021] 279 Taxman 74 (SC)* wherein it was held that interest received on compensation or enhanced compensation would be taxed as per amended provisions introduced through Finance Act, 2009 under different head of income and not under head capital gains. He accordingly, treated order of Assessing Officer as erroneous and prejudicial to interest of revenue. On appeal the Tribunal held that the order of Assessing Officer was based on decision of *Supreme Court in CIT v. Ghanshyam HUF (2009) 182 Taxman 368/315 ITR 1 (SC) [2009]* on issue of taxability of interest received by assessee under section 28 of Land Acquisition Act. Tribunal held that at best be said to be a debatable issue on which two views were possible and Assessing Officer having accepted one of views, Pr. Commissioner could not assume revisional jurisdiction. (AY. 2018-19)
Pawan Kumar v PCIT (2024) 206 ITD 53 (Delhi) (Trib.)

S. 263 : Commissioner-Revision of orders prejudicial to revenue-Rental income from a property-Investment –Income from house property-Assessable as income from house property and not as business income-Revision order is set aside. [S. 23, 28(i), 23, 143(3)] 2772

Assessee is engaged in providing BPO services, IT enabled services and software consultancy service. Assessee had earned rental income from a property owned by it under head current assets and offered same to tax as income from house property which was accepted accordingly. Commissioner invoked revisionary jurisdiction on ground that rental income should have been treated as income from business. On appeal the Tribunal held that since assessee is not engaged in business of earning rental income, but is engaged in providing IT services, rental income earned by assessee on such house property would be chargeable to tax under head Income from house property and not as business income. Revision order is set aside. (AY. 2018-19)
Effective Teleservices (P.) Ltd. v. PCIT (2024) 206 ITD 443 (Ahd) (Trib.)

2773 **S. 263 : Commissioner-Revision of orders prejudicial to revenue –Property held for charitable purposes-Application of accumulated income-AO failed to examine said issue during assessment proceedings, CIT(E) rightly set aside matter to file of AO for making a de novo assessment. [S. 11(2), 11(3), 11(3)(d), 143(3)]**

AO completed assessment of assessee-trust under section 143(3), for assessment year 2017-18. Subsequently, CIT(E) noticed that certain amount had been donated by assessee to other institutions out of accumulated fund in earlier previous year and AO failed to tax same. As per Explanation to section 11(2) read with section 11(3)(d), donations given out of accumulated funds under section 11(2) of earlier previous years are not allowable as application of income for charitable or religious purposes, and therefore, same would be deemed to be income of assessee of previous year 2016-17, and AO ought to have examined this issue during assessment under section 143(3). Therefore, CIT(E) rightly set aside matter to file of AO for making a de novo assessment after proper examination of issue involved. (AY. 2017-18)

Sanganeria Foundations For Health & Education v. CIT (2024) 206 ITD 536 (Delhi) (Trib.)

2774 **S. 263 : Commissioner-Revision of orders prejudicial to revenue-Amounts not deductible-Deduction at source-Non-resident –Failure to deduct tax at source-Revision order is affirmed. [S. 10(38, 14A, 40(a)(i), R. 8D]**

Assessee-company is merged with other company with effect from 1-10-2009. PCIT passed the revision order on the ground that (i) during assessment year 2008-09 assessee made payments to non-residents without deduction of tax at source and Assessing Officer had not examined/verified said issue, and (ii) assessee also earned exempt income under section 10(38) and issue relating to exempt income had not been examined by Assessing Officer and directed the AO to reframe assessment afresh. Tribunal held that since order had been issued by PCIT clarifying entire status of assessee-company and factor of amlagamation, argument of assessee on maintainability of order impugned was devoid of any merit. Tribunal also held that since duty to examine aforesaid issues though cast upon Assessing Officer had not performed by him, order passed by PCIT setting aside order passed by Assessing Officer upon considering it erroneous insofar as prejudicial to interest of revenue is just and proper. (AY. 2008-09)

Simens Healthcare Diagnostics Ltd. v. PCIT (2024) 206 ITD 810 (Ahd) (Trib.)

2775 **S. 263 : Commissioner-Revision of orders prejudicial to revenue –Donation to political parties-No enquiry was made by the Assessing Officer-Revision is held to be justified. [S. 80GGC]**

Assessee claimed deduction under section 80GGC for donation made to political party. Principal Commissioner held that assessee had furnished copy of three donation receipts being made to said party but on perusal of such receipts, it was found that receipts did not contain details of cheque number, bank name, date of cheque issued etc. Principal Commissioner also noted that list of donors did not include name of assessee for three different receipts which clearly proved that donation was bogus. He held that donation made by assessee was bogus and cash had been received back by assessee in lieu of cheque and thus assessment order was erroneous and prejudicial to interests of revenue. Since Assessing Officer simply accepted version of assessee and did not make any

attempt to verify genuineness of receipts issued by political party, there was an evident lack of enquiry by Assessing Officer, while accepting claim of deduction of donation by assessee, while framing assessment order. Therefore, there was no infirmity in order passed by Principal Commissioner. (AY. 2018-19)
Rakesh Balubhai Padariya v. PCIT (2024) 205 ITD 62 (Ahd) (Trib.)

S. 263 : Commissioner-Revision of orders prejudicial to revenue –Examined all details-Possible view-Revision is not valid. [S. 10(21)] 2776
Assessee, a charitable trust, which was engaged in Scientific research associations conducting research and development activities in textile sector. It claimed exemption under section 10(21). Assessing Officer accepted assessee's claim.commissioner (E) was of view that income derived by assessee from Auditorium Hire charges, hoarding site and service charges, and rent was not incidental to objectives of assessee-trust and, thus, not eligible for exemption under section 10(21). On appeal the Tribunal held that since issue as to whether impugned income was incidental to objects of assessee-trust was a debatable issue, revisionary authority was not justified in setting aside order of Assessing Officer. (AY. 2013-14)
Synthetic & Art Silk Mills Research Association v. CIT (2024) 205 ITD 70 (Mum) (Trib.)

S. 263 : Commissioner-Revision of orders prejudicial to revenue-Income from other sources-Share premium-Discounted Cash flow (DCF) method-Selected for scrutiny on the ground that large share premium received during relevant assessment year-Assessing Officer accepted the claim-Commissioner was not justified in setting aside order of AO under section 263 on ground that AO had merely accepted claim of share premium without making enquiry with respect to valuation of shares. [S. 36(1)(va), 56(2)(viib), 142(1), R. 11UA] 2777
Assessee's case was selected for scrutiny where one reason for selection was large share premium received during relevant assessment year. However, Assessing Officer passed assessment by making disallowance under section 36(1)(va) on account of late payment of ESI/PF. Principal Commissioner held that Assessing Officer had made no enquiry with respect to valuation of shares and merely accepted assessee's claim of share premium. He passed revision order setting aside assessment. On appeal the Tribunal held that the assessee had produced valuation report prepared under rule 11UA. Also a notice under section 142(1) was issued wherein assessee was specifically asked questionnaire on said issue. Tribunal held that since assessee had already produced all details in respect of issue of large share premium received during year under consideration at time of original assessment proceedings itself which had been already dealt by Assessing Officer, order of revisional authority is set aside. (AY. 2015-16)
Vaaan Infra (P.) Ltd. v. PCIT (2024) 205 ITD 331 (Delhi) (Trib.)

S. 263 : Commissioner-Revision of orders prejudicial to revenue –Dealer in gold-Loss through MCX transactions for hedging its stock-in-trade-Loss is business loss-Not speculative-Revision is not valid. [S. 28(i)) 43(5)(d), 143(3)] 2778
Assessee is a dealer in gold and silver bullion. It suffered loss through MCX transactions for hedging its stock-in-trade and claimed allowance of same. Assessing Officer accepted

that loss claimed by assessee from hedging its stock through MCX transactions was not a speculative loss and allowed same for setting off against other income. PCIT held that MCX transactions would fall under clause (a) of section 43(5) and Assessing Officer had accepted claim of assessee under clause (d) of section 43(5) and accordingly, he set aside assessment order and directed AO to make fresh assessment. Tribunal held that since from provisions of section 43(5) it was clear that even according to PCIT assessee's case of MCX transactions for hedging loss falling under clause (a) of section 43(5) is not covered under speculative transaction and MCX transactions were done in normal course of business of assessee, loss suffered was business loss of assessee and thus, order of Assessing Officer allowing loss is not erroneous and prejudicial to interests of revenue. (AY. 2014-15)
Ambicaa Sales Corporation v. PCIT (2024) 205 ITD 412 (Bang) (Trib.)

2779 **S. 263 : Commissioner-Revision of orders prejudicial to revenue –-Exemption-Investment in residential house-Time limit-Date of transfer of shares-Capital gains-Investment in a residential house-Investment made in land beyond period of two years-Revision is not justified-Entitle to exemption. [S. 45, 54F]**
Assessee claimed exemption under section 54F on account of purchase of land for construction of residential house and same was allowed in regular assessment. PCIT exercised his power under section 263 and held that exemption claimed under section 54F by assessee on account of purchase of land was wrongly allowed to assessee since land had not been found to have been purchased within prescribed period of two years from date of transfer of shares. On appeal the Tribunal held that section 54F provides a time period of three years to assessee for construction of a house property for claiming exemption of capital gains under section 54F. PCIT had misinterpreted provision of law to hold that assessee was ineligible to claim exemption under section 54F on investment made in land beyond two years. Order of PCIT is set aside. (AY. 2018-19)
Viral Rajendra Patel v. PCIT (2024) 205 ITD 375 (Ahd) (Trib.)

2780 **S. 263 : : Commissioner-Revision of orders prejudicial to revenue –Capital gains-Urban agricultural land-Capital asset-Liable to be assessed as capital gains-Revision is affirmed. [S. 2(14), 45]**
During relevant year, assessee sold an urban agricultural land and a capital asset as per relevant provisions of Act and claimed same to be treated as agricultural land not exigible to capital gains tax, which was accepted by the Assessing Officer. Commissioner passed the revision order directing the Assessing Officer to assessee the capital gains. On appeal the Tribunal held that the Assessee accepted that said land in question was a capital asset under Act. On such confession, PCIT has set aside the assessment order. On facts, sale consideration of land is exigible to capital gains tax. (AY. 2012-13)
Dharam Pal Saini v. PCIT (2024) 205 ITD 617 (Delhi) (Trib.)

S. 263 : Commissioner-Revision of orders prejudicial to revenue-Winnings from lotteries or crossword puzzles-Online gaming-Winning amount paid to players of games available on its website-Revision is justified for limited purpose of examining issue of deduction of TDS under section 194B. [S. 194B] 2781

Assessee company is engaged in business of providing online gaming services. It had filed detailed submissions before Assessing Officer regarding withholding taxes on winning amount paid to players as well as withholding tax on online promotional expenses. In support of its submission, assessee also furnished TDS payment challans under section 194B. Assessee deducted TDS at source at rate of 30 per cent under section 194B only when winning amount exceeded Rs. 10,000. However, Assessing Officer, without conducting any enquiry, passed assessment order. Commissioner invoked revisionary proceedings on ground that Assessing Officer failed to conduct enquiries and verification as to why payments made for winning from lotteries/ crossword puzzles were not routed through profit and loss account and as to why TDS was not deducted on full amount of payment made. On appeal the Tribunal held that since under section 194B as it stood during relevant year, there was no requirement to withhold tax on entire payment made by assessee, allegation of Principal Commissioner that assessee failed to deduct tax on entire payment made towards winning from lottery/crossword puzzle was without any merit. However, it was evident from record that Assessing Officer had not examined/verified details so filed by assessee and, thus, Commissioner was justified in setting aside assessment order for limited purpose of examining issue of deduction of TDS under section 194B. (AY. 2015-16)

Play Games 24x7 (P.) Ltd. v. DCIT (2024) 205 ITD 571/228 TTJ 358 (Mum) (Trib.)

S. 263 : Commissioner-Revision of orders prejudicial to revenue-Share application money-Issue of equity shares to 21 persons-Only four persons filed their balance sheet etc-Failure to make necessary and adequate enquiries into source of investment in shares-Order is erroneous-Revision is justified. [S. 68, 143(3)] 2782

Assessee-company had issued equity shares at Rs. 10 each to 21 persons thereby raising equity share capital and had also availed fresh unsecured loans. Assessing Officer accepted said share capital investment. Pr. CIT noticed that assessee furnished copies of IT, bank statements and confirmations from all persons (Shareholders and/or loan providers) but out of 21 shareholders, only 4 persons had submitted their balance sheets and that bank statements of some of these persons also revealed that in some cases cash/ cheques were deposited/credited in their bank accounts immediately prior to issuing funds to assessee-company either as share capital or as loan. PCIT set aside assessment order as erroneous and prejudicial to interests of revenue, since same was passed by Assessing Officer without making necessary and adequate enquiries into source of investment in shares of assessee-company. In case of said four persons who had filed their balance sheets, it was found that huge amount of unsecured loans was availed by them and accordingly, aforesaid investments in share capital of assessee-company were made out of borrowed funds and further, said shareholders gave substantial amount as unsecured loan but they did not have sufficient means. On appeal the Tribunal held that enquiry made by the Assessing Officer was not adequate and he simply accepted version of assessee without application of mind. Accordingly, order passed by Assessing

Officer was erroneous and prejudicial to interests of revenue. Revision order is affirmed. (AY. 2016-17)
Lado Ceramic (P.) Ltd. v. PCIT (2024) 204 ITD 111 (Rajkot) (Trib.)

2783 **S. 263 : Commissioner-Revision of orders prejudicial to revenue –Donations to NGOs out of accumulated funds-Not allowable as application of income-Deemed to be income of the assessee-Revision order is affirmed. [S. 11(2), 11(3), 12AA, ITAT R. 18(6)]**
The assessee has made donation to NGOs and claimed as application of income. Assessing Officer accepted said explanation and completed assessment. Commissioner (E) invoked revisionary proceedings on ground that contribution to deserving NGOs even if working in collaboration with assessee would be donation and would be hit by section 11(2) as the donations to NGOs out of its accumulated funds, same could not be allowed as application of income for charitable or religious purposes and would be deemed as income of assessee. Tribunal affirmed the order of Revision. (AY. 2017-18)
Sahachari Foundation v. ITO (2024) 204 ITD 429 (Delhi) (Trib.)

2784 **S. 263 : Commissioner-Revision of orders prejudicial to revenue-Employment of new workmen-There was proper verification and application of mind by Assessing Officer-Report in Form 10DA for claiming deductions under section 80JJAA was filed-Revision is not valid. [S. 80JJAA, 143(3)]**
Principal Commissioner observed discrepancies in assessment records, including addition of fixed assets with claimed depreciation, commission payment without TDS deduction, and a deduction under section 80JJAA. Consequently, Principal Commissioner proposed revised assessment under section 263, asserting that Assessing Officer did not verify these aspects. In response to show cause notice, assessee argued that assessment was conducted with due verification and application of mind by Assessing Officer. However, Principal Commissioner remained unsatisfied, deeming assessment as erroneous and prejudicial to revenue. On appeal to Tribunal held that the Assessing Officer had conducted inquiries during assessment proceedings, as evident from notice issued under section 142(1) and replies provided by assessee. There was no flaws in submissions made by assessee in response to notice under section 263. Additionally, report in Form 10DA for claiming deduction under section 80JJAA was duly filed without specific defects highlighted by Principal Commissioner. Since there was proper verification and application of mind by Assessing Officer while framing assessment under section 143(3), revision order would not be sustainable. (AY. 2018-19)
GMM Pfaudler Ltd. v. PCIT (2024) 204 ITD 522 (Ahd) (Trib)

2785 **S. 263 : Commissioner-Revision of orders prejudicial to revenue-Scientific research expenditure-Donation-Approval granted was expired-Claim of weighted deduction was incorrect-Order is erroneous. [S. 35(1)(ii)]**
Assessee-company made donation to a trust during year and claimed weighted deduction at rate of 175 per cent under section 35(1)(ii). Assessing Officer allowed the deduction. Commissioner invoked revision jurisdiction on ground that approval granted to said institute for receiving donations under said section had expired long back. He set aside order of Assessing Officer. On appeal the Tribunal held that since institute to which donation was made by assessee during relevant assessment year was not approved for

said purposes for impugned year as approval granted to said institute expired long back, Assessing Officer had committed an error in allowing said claim of assessee for weighted deduction. Order of revision is affirmed. (AY. 2015-16)
Joshi Technologies International Inc. v. CIT (IT & TP) (2024) 204 ITD 496 (Ahd) (Trib)

S. 263 : Commissioner-Revision of orders prejudicial to revenue-Educational institutions (Approval)-New institute which was not included in list of institutes run by assessee-trust which was granted approval under section 10(23C)(vi)-Revision is held to be valid. [S. 10(23C)(vi), 11, 12A] 2786
Assessee-trust was granted approval under section 10(23C)(vi) in respect of five institutions only. Subsequently, assessee added a new institute to trust. However, name of said new institute was not appearing in list of institutes which was granted approval. Commissioner revised the order. On appeal the Tribunal held that approval granted to assessee-trust under section 10(23C)(vi) in year 2012 could not apply to a new institute added to trust subsequently. Since approval originally granted could not have extended to new institute added subsequently, order granting exemption to income of new institute was erroneous. Merely because assessee had been granted registration under section 12A, exemption under section 11 was not automatic and same needed verification. Accordingly, revision order setting aside assessment order is upheld. (AY. 2015-16)
Shri Shamjibhai Harjibhai Talavia Charitable Trust v. PCIT (2024) 204 ITD 583/227 TTJ 489 (Rajkot) (Trib.)

S. 263 : Commissioner-Revision of orders prejudicial to revenue –CSR expenses-Donations-Business income-Explanation 2 to section 37(1) which denies deduction for CSR expenses by way of business expenditure is applicable only to extent of computing 'business income' under Chapter IV-D and; there would be no bar for assessee to claim benefit under section 80G, falling in Chapter VIA. [S. 37(1), 8OG] 2787
Assessee contributed certain sum as part of CSR towards various charitable trusts and claimed same as deduction under section 80G. The Assessing Officer allowed the claim. Commissioner passed revision order set aside the order. On appeal the Tribunal held that Explanation 2 to section 37(1) which denies deduction for CSR expenses by way of business expenditure is applicable only to extent of computing 'business income' under Chapter IV-D and; it could not be extended or imported to CSR contributions which was otherwise eligible for deduction under Chapter VI-A. Since genuineness of transactions and identity of donees were not under challenge, there would be no bar on assessee to claim benefit under section 80G, falling in Chapter VIA. (AY. 2018-19)
Societe Generale Securities India (P.) Ltd. v. PCIT (2024) 204 ITD 796 (Mum) (Trib.)

S. 263 : Commissioner-Revision of orders prejudicial to revenue-Not earned any exempt income-Additional depreciation-Allowed in earlier year-Manufacture-Extraction of minerals from beach sand involved change in non-living physical object/article into a new and distinct object/article having different name and use-Activities amounts to manufacture-Revision is not valid. [S. 14A, 32(1)(ii), 32AC] 2788
Held that where assessee had not earned any exempt income during year, no disallowance under section 14A was called for. Additional depreciation was allowed for

the Assessment year 2012-13. Held that extraction of minerals from beach sand involved change in non-living physical object/article into a new and distinct object/article having different name and use, activities carried out by assessee amounted to manufacture and thus, claim of assessee for deduction under section 32AC was in order. Revision order is quashed. (AY. 2015-16)
Trimex Sands (P.) Ltd. v. PCIT (2024) 204 ITD 435 (Chennai) (Trib.)

2789 **S. 263 : Commissioner-Revision of orders prejudicial to revenue-Revision on the basis of investigation/ enquiries conducted post completion of assessment-Sale of shares-Long term capital gains-Reassessment order is invalid. [S. 143(3)]**
The PCIT had invoked his jurisdiction u/s 263 of the Act despite admitting that based on evidence available on record, the AO could not doubt the purchase and sale of shares. After completion of assessment, some investigation was carried out by the department, which allegedly revealed that the share transaction was through an entry operator, hence, non-genuine. However, what was the nature of such investigation, what was the material brought on record therefrom was not forthcoming either from the SCN or the order passed u/s 263 or to what extent the Assessee or the concerned broker was involved in such non-genuine transactions has not been discussed by the PCIT. Further, in spite of repeated requests, such adverse materials/ investigation report was never confronted to the Assessee. In such circumstances, the assessment order cannot be considered to be erroneous and prejudicial to the interest of revenue. (AY. 2017-18)
Kaustubh Gupta v. PCIT [2024] 109 ITR 10(SN)(Delhi) (Trib)

2790 **S. 263: Commissioner-Revision of orders prejudicial to revenue-Long term capital gains-[S. 45, 115O, 115P]**
Where revisionary proceedings were invoked on grounds that the assessee wrongly adjusted LTCL twice once with LTCG and then again with STCG since the same was a case of bona fide mistake committed by the assessee purely based on verifiable facts which had no bearing on income-tax liability for the year under the consideration and effect was on availability of MAT credit in the subsequent year for which assessee submitted to make a course correction, revisionary proceedings under section 263 would not be justifiable.
Revision of an order under section 263 presupposes the existence of an order since levy of interest under section 115P and any liability of DDT under section 115-O gets fastened on the assessee by provisions contained under Chapter XIID and did not form part of assessment order under section 143(3), Principal Commissioner could not have invoked revisionary proceedings to direct AO to impose DDT liability in reference to assessment order passed under section 143(3) (AY. 2018-19)
Bijni Dooars Tea Co. Ltd. v. PCIT [2024] 109 ITR 105/ 204 ITD 75/ 228 TTJ 552 (Kol)(Trib)

2791 **S. 263 : Commissioner-Revision of orders prejudicial to revenue-Capital gains-Profit on sale of property used for residence-Capital gains not deposited in CGAS-Capital gain was invested in purchase/construction of residential house within time limit prescribed under section 54(1) –Revision is held to be not valid. [S. 45, 139(1)]**
Tribunal held that merely because capital gain was not deposited in capital gain account scheme within time, the assessment order allowing assessee's claim under section 54

could not be treated as erroneous and prejudicial to interest of revenue where capital gain was invested in purchase/construction of residential house within time limit prescribed under section 54(1). Revision is held to be not valid. (AY. 2012-13)
Sarita Gupta (Ms.) v. PCIT [2024] 109 ITR 373 / 204 ITD 299 (Delhi) (Trib)

S. 263 : Commissioner-Revision of orders prejudicial to revenue-Order without Document identification No (DIN) quashed -Order is bad in law. [S. 153C] 2792
The additional grounds relate to the validity of Order under Section 263 for the reason that the Order issued was a manual order and did not contain document identification number (DIN) which was not in accordance with the instruction of CBDT issued vide Circular No. 19 of 2019 dated 14th August, 2019 [2019] 416 ITR (St.) 140.
Held that according to Circular No. 19 of 2019 dated 14th August, 2019 all communication must have a computer-generated identification number. However, in exceptional circumstances, manual issuance was allowed, but in such cases, it must be explicitly mentioned that the communication was issued manually without a document identification code and must have written approval of the Chief Commissioner or Director General of Income-tax. Failure to comply with these mandatory requirements rendered the communication invalid and deemed never to have been issued. Therefore, the order was not in conformity with CBDT Circular, hence, the orders passed under Section 263 for assessment years 2014-15 to 2016-17 were invalid and deemed to have never been issued. Followed *Tata Medical Centre Trust v. CIT(E) [2023] 33 ITR (Trib.)-OL-495 (Kol.) and Brandix Mauritius Holdings Pvt. Ltd. v. Dy. CIT (IT)* (AY. 2014-15 to 2016-17)
Dilip Kothari v. PCIT [2024] 109 ITR 654 (Bang)(Trib)

S. 263 : Commissioner-Revision of orders prejudicial to revenue-Scientific research expenditure-Donation to trust-Weighted deduction-Approval granted was expired-Order of the Assessing Officer allowing the claim is erroneous-Revision order id affirmed. [S. 35(1)(ii)] 2793
The Assessee company made donation to a trust and claimed weighted deduction at rate of 175% under section 35(1)(ii). Assessing Officer also allowed the same. The Commissioner invoked the revision under section 263 on the grounds that approval granted to said institution for receiving donation under said section had expired long back and set aside the order of the assessing officer. On appeal the Tribunal held that the institution to which donation was made by the assessee during the impugned year and weighted deduction claimed thereon under section 35(1)(ii) was not approved for the said purposes for the year and also the approval granted to the said institution was expired on 31-3-2006. As the said institute was not approved for receiving donation under section 35(1)(ii) during the impugned year, the revision order is affirmed. (AY. 2015-16)
Joshi technologies international Inc. v. CIT(2024) 204 ITD 496 (Ahd)(Trib)

2794 **S. 264: Commissioner-Revision of other orders-Principle of natural justice-Order passed without giving an assessee adequate opportunity to be heard is set aside. [S. 5, Art. 226]**

Allowing the petition the Court held that order passed without giving an assessee adequate opportunity to be heard is set aside as the principle of natural justice is violated. Liberty is granted to the Petitioner to produce additional evidence pleadings, documents etc. (AY. 2013-14 to 2015-16)

Shameer Razaik v. PCIT (2024) 471 ITR 448 (Karn)(HC)

2795 **S. 264: Commissioner-Revision of other orders-Assessment order passed by Dy. CIT, CPC-CPC only acts as a facilitator to the JAO and merely because the return is processed by CPC the regular jurisdiction of the JAO is not curtailed and he continues to hold the jurisdiction-Order dt. 25th March, 2022 is quashed and set aside-Principal CIT-5 is directed to dispose assessee's application in accordance with law. [S. 120, 143(1), 143(2), Art. 226]**

Allowing the petition the Court held that the CPC only acts as a facilitator to the JAO who holds jurisdiction over assessee under S. 120. Merely because the return is processed by CPC, the regular jurisdiction of the JAO is not curtailed and he continues to hold the same jurisdiction. This is evident from the fact that a demand resulting from the processing of a return under S. 143(1) by CPC is also enforced by the JAO. It is JAO who issues a notice under S. 143(2) if the return is to be selected for scrutiny and frames the assessment. Even under the faceless regime, once the assessment has been framed by the Faceless Assessing Officer (FAO) all records are transferred to the JAO for recovery of demand and other incidental matters. In fact in many matters Principal CIT have exercised jurisdiction in identical situation. Therefore, for respondent No. 1 Principal CIT-5 to say that he will have no jurisdiction to entertain assessee's application under S. 264 because the Dy. CIT, CPC is not reporting to him is not correct. Commissioner is directed to dispose the application on merits. (AY. 2016-17)

Sarda Paper Ltd. v. PCIT (2024) 338 CTR 501/ 61 taxmann.com 362 (Bom)(HC)

2796 **S. 264: Commissioner-Revision of other orders-Credit for tax deducted at source-Double taxation agreement-Refund interest-Respondents are directed to refund the amount along with statutory interest forthwith. [S. 90, 155(14), 199, Form No 266AS, Art. 226]**

The CIT, held that income received from BALIC was never offered to tax, the assessee is not entitled to be accorded credit of the TDS which was deposited. On writ the Court held that the view taken by the CIT is clearly misconceived since it ignores the fact that the assessee had consistently asserted that the income received from BALIC would not be taxable in India by virtue of S. 90. The CIT also fails to bear in consideration the indisputable fact that the return of the assessee for asst. AY. 2015-16 was duly processed under S. 143(3) with no additions being suggested. The position as taken by the assessee thus appears to have been duly accepted. Therefore, the CIT has clearly erred in holding that the assessee was liable to offer that income to tax before being entitled to claim the benefit of tax deducted at source. (AY. 2015-16)

Munchener Ruckversicherungs Gesellshaft Aktiengesellschaft In Munchen v. CIT (IT) (2024) 341 CTR 941 / 8 NYPCTR 1232 (Delhi)(HC)

S. 264: Commissioner-Revision of other orders-Rejection application under section 154-Intimation-Remuneration to partners-Expenses claimed-Directed to file an appeal-Writ petition is dismissed-Delay in filing the appeal or Revision against the intimation is directed to be condoned. [S. 143(1), 154, 246A, Art. 226] 2797

Assessee had declared in the return, Rs. 10,08,359 as remuneration paid to the partners which would be exigible to tax in the hands of the partners. However, the remuneration paid to the partners as declared in the very same return came only to Rs. 3,54,000. There are a number of expenses shown under Annex. 3, P&L a/c and it requires a process of deduction, as to the expenses claimed, to come to the conclusion that those were in fact to be declared as 'other expenses', wherein, there is specific indication that the assessee should specify the nature and amount. Hence, it cannot be said that even if it is a bona fide mistake, there can be a rectification made under S. 154. In such circumstances neither the order under S. 154 can be assailed nor can the rejection of a revision, from that order under S. 154-In a revision against the intimation under S. 143(1), a due enquiry can be carried out, wherein the assessee would be able to point out the specific instances, of the expenses incurred and its nature, thus enabling exemption from payment of tax to that extent. Assessee is advised to file an appeal or revision from the intimation under S. 143(1), the delay in which would be condoned. (AY. 2016-17)

Hotel Raj Laxmi v. PCIT (2024) 337 CTR 102 (Pat) (HC)

S. 264: Commissioner-Revision of other orders-Subsidy-Erroneously treated as revenue-Return was processed under section 143(1)-Revision application was rejected without condoning the delay-Power should be exercised in a liberal manner-Delay should be condoned where there is sufficient cause for it. [S. 264(3), Art. 226] 2798

Held, that the application for revision had been filed on the ground that certain subsidies received by the assessee were erroneously treated as revenue receipts instead of capital receipts. After the receipt of the order of the Tribunal for the Assessment year 2012-13, the petitioner filed Revision application on July 1, 2019, within five months from the date of receipt of the order of the Tribunal and the time limit for filing revision application was expired on January 16, 2018 Commissioner has not condoned the delay and dismissed the petition. On writ the Court held that power should be exercised in a liberal manner and delay should have been condoned where. Accordingly the order dated March 20, 2020 passed by the Commissioner under section 264 of the Act is quashed and set aside. Commissioner is directed to (AY. 2015-16)

Jindal Worldwide Ltd v. PCIT (2024) 466 ITR 672 (Guj)(HC)

S. 264: Commissioner-Revision of other orders-Public charitable trust-Rectification application-Delay and filing errors-The order rejecting revision petition was set aside and matter was to be remanded to Commissioner for reconsideration on merits. [S. 2(15), 10(23C)(vi), 154, Art. 226] 2799

Assessee, public charitable trust with approval under section 10(23C)(vi), filed revision petition under section 264 against rejection of rectification request for inadvertent error in income tax return. Commissioner rejected revision petition without examining merits, citing delay and errors in filing returns. On writ the Court held that Commissioner's

powers under section 264 are wide enough to warrant examination of merits of revision petition. Court also held that rejection of revision petition solely on grounds of delay and filing errors, without considering assessee's prior approval under section 10(23C)(vi) and substantive claim for exemption, was improper. Accordingly the order rejecting revision petition was to be set aside and matter was to be remanded to Commissioner for reconsideration on merits. (AY. 2018-19)(SJ)
AKR Academy v. CIT (E) (2024) 299 Taxman 474 (Mad.)(HC)

2800 **S. 264: Commissioner-Revision of other orders-Income wrongly offered to tax and paid taxes-Assessment completed under section 143(1)) Time for filing revised return under section 139(5) has expired-Double addition-Order of Commissioner dismissing the revision application is set aside-Commissioner is directed to allow the claim of the assessee by passing an appropriate order. [S. 43B, 139(5), 143(1), Art. 226, 265]**
Petitioner was making a provision for bonus, ex-gratia and incentives payable to employees, at the time of preparation of the financial statements. In the computation only the actual payment was claimed and excess provision was disallowed under section 43B of the Act. However in the next year the assesseee has offered entire provision to tax. The petitioner has realised the mistake while finalising the accounts of latter years. The petitioner moved an application under section. 264 of the Act and prayed for refund of excess amount offered for taxation. The Commissioner rejected the application on the ground that the assessee should have filed revised return under section 139(5) of the Act and also in view of judgement of Apex court in *Goetze (India) Ltd v. CIT (2006) 284 ITR 323 (SC)* the revision application is not maintainable. On writ allowing the petition the Court held that Commissioner was not correct in rejecting the revision application filed by the petitioner on the ground that the petitioner had not filed a revised return within the prescribed limitation. Court also held that Section 264 is a salutary provision which also bridges the gap and / or removes vacuum to remedy a bona fide mistake and / or for correction of an inadvertent situation, which may take place in the assessment proceedings. By remedying such mistake by orders being passed under Section 264 of the Act, any illegality or injustice which would otherwise be caused to the assessee can be corrected so as to maintain a lawful course of action being followed in the course of assessment. The object of such provision also appears to be that the law would not be oblivious to any bona fide human mistake which may occur at the end of the assessee and which if otherwise permitted to remain, may lead to injustice or the provisions of law being breached. As regards the decision in Goetze (India) Ltd v. CIT (2006) 284 ITR 323 (SC) it is not in the context of the revisionary powers as conferred under the provisions of section 264 of the Income-Tax Act, but in the context of deduction claimed by the assessee by a letter, after the return was filed, without filing of a revised return. Accordingly the Revision petition is allowed and the Commissioner is directed to pass the order accordingly. (AY. 2019-20, 2020-21, 2021-22)
Bahar Infocons Pvt. Ltd v. PCIT (2024) 301 Taxman 349 /341 CTR 705 / 243 DTR 417 (Bom)(HC)

S. 264: Commissioner-Revision of other orders-Delay of two years-Pedantic-Genuine hardship cannot be restricted to severe financial crises is only unwarranted-The Authorities have to do substantial justice-Directed to condone the delay and decide the matter on merits-Rectification of mistake-Duty of Assessing Officer-Pendency of rectification application for six years-The Assessing Officer duty bound to pass order expeditiously-The Hon Court directed to place copy of this order to the Chairman of CBDT, so that suitable actions are taken to comply with the directions given by this court. [S. 44AB, 80IC, 119(2)(b), 143(1), 154, Art. 226, Form No 10CCB] 2801

Petitioner had engaged the services of Chartered Accountants who audited petitioner's accounts and also of the undertaking M/s Creative Industries, which was run by petitioner as the sole proprietor. The audit report obtained under Section 44AB of the Act was filed along with the return of income and there was no reason to believe that Form 10CCB had not been uploaded by the Chartered Accountants. No unfair advantage has been obtained by petitioner on account of this inadvertent error. Therefore, the inadvertence/ oversight in uploading Form No. 10CCB by the auditor/ the Chartered Accountants of petitioner were circumstances beyond the control of petitioner and would constitute a reasonable cause for not uploading Form No. 10CCB along with the return of income. The legislature has conferred power on CBDT to condone the delay to enable the authorities to do substantive justice to the parties by disposing the matter on merits. Routinely passing the order without appreciating the reasons why the provisions for condonation of delay has been provided in the Act, defeats the cause of justice. In the circumstances, the impugned order was set aside and quashed. The Hon Court directed to place a copy of this order to the Chairman of CBDT, so that suitable actions are taken to comply with the directions given by this court. (AY. 2016-17)

Pankaj Kailash Agarwal v. ACIT [2024] 464 ITR 65 / 161 taxmann.com 383 (Bom)(HC)

S. 264: Commissioner-Revision of other orders-Rectification of mistake-Long term capital gains-Time-Limit-Sale of flat inherited-Indexed cost of improvement-Omission of claim of deduction of Indexed renovation expenses in return of income-Rectification application is rejected on the ground that new claim was not raised earlier-Claim was accepted in other co-owners-Matter remanded for de novo consideration. [S. 45, 48, 50(C)(2), 143(3), 154, Art. 226] 2802

Allowing the petition the Court held that there was no delay in filing the application under section 264 of the Income-tax Act, 1961, because the application under section 264 of the Act was against the order passed under section 154 of the Act and not that passed under section 143(3) of the Act. The order under section 154 of the Act was passed within one year from the date of application filed under section 264 of the Act. In the assessment order passed in the case of another co-owner of the flat, the Assessing Officer had accepted certain amount as the indexed cost of renovation. Therefore, the amount had to be accepted as correct and suitable allowance should be made while arriving at the long-term capital gains. The order was quashed and set aside. The matter was remanded to the first respondent for de novo consideration and to pass a reasoned order after providing the assessee with an opportunity of hearing. Court also observed that, Section 264 confers wide jurisdiction on the Commissioner. The proceedings under section 264 of the Act are intended to meet a situation faced by an aggrieved assessee,

who is unable to approach the appellate authorities for relief and has no other alternate remedy available under the Act. The Commissioner is bound to apply his mind to the question whether the assessee was taxable on that income and his powers are not limited to correcting the error committed by the subordinate authorities but could even be exercised where errors are committed by the assessee. It would even cover situation where the assessee because of an error has not put forth legitimate claim at the time of filing the return and the error is subsequently discovered and is raised for the first time in an application under section 264 of the Act. (AY. 2007-08)
Pramod R. Agrawal v. PCIT (2024) 464 ITR 367 (Bom)(HC)

2803 **S. 264 :Commissioner-Revision of other orders-Capital gains-Intimation under section 143(1) is an order amenable to revision jurisdiction-Matter remanded to the Principle Commissioner to pass s fresh order on application of assessee. [S. 45, 48, 143(1), 264 Art. 226]**
Assessee was a promoter of a company and held 3,34,700 shares in said company. He, along with other promoters, had entered into subscription and purchase agreement (SPA) with a company and sold 100 per cent of their company shares for a consideration of certain amount-Assessee filed its return of income disclosing LTCG on sale of shares including amount kept in escrow account. Assessment was completed under section 143(3). Thereafter, certain statutory and other liabilities arose in company for period prior to sale of shares and amount kept in escrow account was withdrawn. Assessee filed petition under section 264 seeking refund of excess tax paid on excess capital gains shown earlier in its income. Principal Commissioner rejected same on ground that intimation under section 143(1) was not an order amenable to revisional jurisdiction under section 264. In case of other promoter on similar issue High Court held that capital gains on transfer of shares of company should be computed after reducing proportionate amount withdrawn from escrow account from full value of consideration and allowing refund of additional tax paid with interest. Allowing the petition the Court held that intimation under section 143(1) is an order amenable to revisional jurisdiction under section 264. The matter was to be remanded to Principal Commissioner to pass a fresh order on application of assessee. Referred. *Diwaker Tripathi v. Pr. CIT [2023] 295 Taxman 532 (Bom.) (HC).* (AY. 2011-12)
Gopal Vazirani v. PCIT (2024) 298 Taxman 515/466 ITR 376 (Bom.)(HC)

2804 **S. 264 : Commissioner-Revision of other orders –Principle of natural justice-Application was rejected-Matter was not heard and disposed on the date hearing-Matter is set aside to decide the matter after giving a reasonable opportunity of hearing. [Art. 226]**
Assessee filed an application under section 264 and notice under section 264 was issued to assessee on 6-3-2021, setting a hearing for 10-3-2021. Assessee could not attend hearing and did not request an adjournment. No order was passed on 10-3-2021, but another hearing was scheduled for 16-3-2021, where revision application was rejected. Subsequently, Pr.commissioner passed an order dated 23-3-2021. On writ the Court observed that date of order was 23-3-2021 and not 16-3-2021 and though matter was fixed for 10-3-2021 but no order was passed by officer concerned on that date and in fact, matter was posted for a subsequent date wherein no notice was given to assessee. As revision application was filed by assessee under section 264, officer concerned ought

to have granted a further opportunity to assessee to appear, since matter was not heard out and decided on that date. Accordingly the order dated 23-3-2021 is quashed and set-aside.
Ritu Mittal (Smt.) v. ITO (2024) 298 Taxman 112 (All.)(HC)

S. 264 : Commissioner-Revision of other orders-Fringe benefit tax-Included in the return as abundant caution-CIT(A) held that the amount included in the return is not chargeable to tax-Revision application is filed after 5-6 years-Application for condonation of application is rejected-Allowing the petition the Court held that since it took a long time for Commissioner (Appeals) to dispose assessee's appeal, Commissioner should have condoned delay and decided matter on merits. [S. 115WB, 143(1), 250, Art. 226] 2805

In course of filing its return of fringe benefit tax, assessee included certain amounts as chargeable to tax out of abundant caution. Subsequently, Commissioner (Appeals) allowed assessee's claim and held that amounts included in FBT returns were not chargeable to FBT. Thereafter assessee filed an application under section 264 for refund of amount paid as FBT.commissioner, however, rejected said application on ground that there was a substantial delay in filing same. Court held that Commissioner (Appeals) took almost 5-6 years to decide assessee's appeal therefore while considering question of condonation of delay under section 264, Commissioner should not take a pedantic approach but should be liberal and words 'sufficient cause' should be given a liberal construction so as to advance substantial justice when no negligence nor inaction nor want of bona fide is imputable to assessee. Revisional power is coupled with a duty to exercise it in interests of justice of parties and revisional authority must act according to rules of reason and justice. Delay is condoned and directed the Commissioner to decide the matter on merits. (AY. 2009-10)
Hindalco Industries Ltd. v. UOI (2024) 297 Taxman 412 /464 ITR 236 (Bom.)(HC)

S. 264 : Commissioner-Revision of other orders-concessional rate of tax on dividend distributed to its foreign holding company-Not justified in rejecting revision application on ground that assessee could have filed a revised return or an appeal under section 248-DTAA-India-Mauritius-Matter remanded to decide on merit. [S. 9(1)(i), 90, 139(5), 195, 248, Art. 10(2), Art. 226] 2806

Assessee is engaged in business of providing IT and IT enabled services, declared and paid dividend to its holding company, a company incorporated in Mauritius and in respect of such dividend, assessee paid Dividend Distribution Tax (DDT). Based on assessee's return, DDT was assessed by CPC as being payable at rate of 20. 36 per cent. Assessee became aware that, as per section 90, it was entitled to benefit of DTAA between India and Mauritius, namely, concessional rate specified in article 10(2). Accordingly, assessee filed application for revision under section 264 before Principal Commissioner, Application was rejected on grounds that assessee could have filed a revised return or an appeal under section 248. On writ the Court held that first ground of rejection in impugned order was untenable, as time limit for filing revised return had expired. Further since section 248 applies to a case where tax deducted on payments made under section 195 to a non-resident, other than by way of interest, is required to be borne by person by whom income is payable as per contract or arrangement between

parties and person making deduction claims that tax was not payable whereas instant case pertained to declaration and distribution of dividend by assessee to its shareholders and tax payable thereon, and, thus, impugned order was to be set aside and matter was to be remanded back to Principal Commissioner for reconsideration on merits. (AY. 2018-19)
Dun & Bradstreet Technologies & Data Services (P.) Ltd v. PCIT (2024) 297 Taxman 323 /471 ITR 234 (Mad)(HC)

2807 **S. 264 : Commissioner-Revision of other orders-Claim to deduction under Section 80IA not made in return of income and assessment order passed-Principal Commissioner or Commissioner Competent to consider claim for deduction-Matter Remanded. [S. 80IA, 139, 263, Art. 226]**
For the assessment year 2014-15, the Assessing Officer passed an order under section 143(3) against the assessee. Thereafter, the assessee filed an application before the Principal Commissioner under section 264 in which it submitted that it had commenced its business operations during the previous year 2013-14 and accordingly the assessment year 2014-15 was the first year under assessment and that though it was entitled to claim deduction under section 80-IA because of a bonafide error it did not claim it either at the time of filing the return of income or during the assessment proceeding. The assessee also sought condonation of delay of 52 days. The Principal Commissioner condoned the delay and observed that the assessee did not opt to make the claim to deduction under section 80-IA and that in the subsequent assessment year 2015-16 also, the assessee did not make such claim before the Assessing Officer. He opined that the assessee chose not to claim deduction under section 80-IA and declined to interfere under section 264 in the order of the Assessing Officer. On a writ allowing the petition, that there was no limitation on the exercise of power under section 264 by the Principal Chief Commissioner or Chief Commissioner or Principal Commissioner or Commissioner. The order rejecting the assessee's application was set aside. The matter was remanded to the Principal Commissioner for reconsideration of the revision application filed by the assessee under section 264 on the merits after giving due opportunity of hearing to both the sides. Relied on *Geekay Security Services (P) Ltd. v. DY. CIT [2019] 101 taxmann.com 192 (Bom)(HC), Gooetze (India) Ltd v. CIT (2006) 284 ITR 323 (SC)* distinguished. (AY. 2014-15)
Tata-Aldesa Jv v. UOI (2024)460 ITR 302/159 taxmann.com 534 (Telangana)(HC)

2808 **S. 268A : Appeal-Instructions –Monetary limits-Less than 10 lakhs-Applicable to pending appeals-SLP of Revenue is dismissed. [S. 119, 260A, Art. 136]**
High Court held that, in order to bring harmony with National Litigation Policy, Instruction No. 3 of 2011 would also apply to pending appeals in various Courts or Tribunals unless it was pointed out by department that appeal would have a cascading effect in other assessment years of assessee or that it was within exception provided in instructions that was issued at time when appeal was presented. On SLP the Court held that tax effect was of an amount which was less than Rs. 10 lakhs. SLP of Revenue is dismissed. Instruction No. 3 of 2011, dated 9-2-2011. (AY. 1993-94)
CIT (Central) v. Shyam Biri Works (2024) 297 Taxman 140 (SC)
Editorial : CIT v. Shyam Biri Works (2015) 57 taxmann.com 157 /231 Taxman 543/ 374 ITR 68 (All)(HC)

S. 268A : Appeal-Instructions-Circulars-Monetary limits-Bad debt-Lease and finance-SLP filed by revenue against said impugned order was to be dismissed as, in terms of CBDT Circular No. 17/2019 dated 8-8-2019, tax amount on which notice had been issued, was less than Rs. 2 crores. [S. 36(1)(vii)] 2809

High Court affirmed the order of the Tribunal wherein the Tribunal allowed the bad debt on the ground that the same was incurred in the ordinary course of business.

PCIT v. Gujarat Lease Financing Ltd. (2024) 296 Taxman 73 (SC)

Editorial :Refer, PCIT v. Gujarat Lease Financing Ltd(2023) 155 taxmann.com 635 (Guj)(HC)

S. 268A: Appeal-Instructions-Circulars-Monetary limits-Enhancing monetary limits-Applicable to all pending appeals. [S. 253, 260A] 2810

Circular 3 of 2018 and Circular 17 of 2019 were superseded by Circular 5 of 2024 dtd. 15–03–2024 By subsequent Circular 9 of 2024 dtd. 17–09–2024, monetary limits specified in Circular 5 of 2024 enhanced and exception of Circular 5 of 2024 retained. Court held that the Circular shall apply retrospectively to all pending appeals and the reliance of Revenue on exceptions carved out the Circular 3 of 2018 could not be sustained. Revenue's appeal is dismissed. (AY. 2015-16)

CIT v. Satish Kumar Agarwal (2024) 301 Taxman 335 (Raj)(HC)

S. 268A : Appeal-Instructions-Circulars-Monetary limits-Audit objection-Appeal to Tribunal-Revenue filed appeal before Tribunal claiming that in view of circulars of CBDT case would fall under exception provided in Circular No. 3/2018 as same was case of audit objections-In view of latest CBDT Circular No. 5/2024, dated 15-3-2024, there was no exception to monetary limit regarding any audit objection-Due to low tax effect appeals of revenue would not be maintainable and were to be dismissed. [S. 80P, 253] 2811

On appeal before Tribunal, revenue contended that though tax effect was below prescribed monetary limit provided in circulars of CBDT but these cases would fall under exception provided in para no. 10(c) of Circular No. 3/2018 being case of audit objections. Dismissing the appeal the Tribunal held that in latest CBDT Circular i. e Circular No. 5 of 2024, dated 15-3-2024 there was no exception to monetary limit regarding any audit objection. Therefore CBDT circulars prescribing monetary limits for filing appeals by revenue would also be applicable on pending appeals on date of circular. Circular No. 5 of 2024, dated 15-3-2024, would be applicable and consequently, due to low tax effect appeals of revenue would not be maintainable and were to be dismissed. (AY. 2014-15, 2015-16)

ITO v. M. P. Police Sakh Sahakari Sanstha Maryadit. (2024) 207 ITD 768 (Indore) (Trib.)

S. 270A : Penalty for under-reporting and misreporting of income-Rectification order-No penalty proceedings or any other proceedings can be initiated under the assessment order which stand merged in the rectification order. [S. 154, Art. 226] 2812

Penalty was levied without giving credit for TDS in the assessment order. Rectification order was passed rectifying the assessment order by allowing the credit for TDS. Against the penalty order the assessee filed the writ petition. Allowing the petition the Court held that, no penalty proceedings or any other proceedings can be initiated under

the assessment order which stand merged in the rectification order. Penalty order is quashed. (WP No. 4748 of 2022 dt 23-10-2024) (AY. 2017-18)
Kusharaj Madhav Bhandary v. ITO (2025) 474 ITR 549 (Bom)(HC) www.itatonline.org.

2813 **S. 270A : Penalty for under-reporting and misreporting of income-Application filed by assessee under section 270AA seeking immunity from imposition of penalty had not been decided by Assessing Officer within prescribed time, impugned penalty order as well as demand notice issued under section 156 were to be set aside. [S. 155(18), 156, 270AA, Art. 226]**
Assessee-company filed its return of income claiming deduction in respect of education cess. Subsequently, assessee withdrew its claim for deduction of education cess. Assessing Officer however made addition on account of disallowance of deduction of education cess and initiated penalty proceedings under section 270A for misreporting of income. Assessee filed an application under section 270AA seeking immunity from imposition of penalty under section 270A. Assessing Officer passed a penalty order under section 270A. Since assessee had withdrawn its claim for deduction of education cess in view of insertion of sub-section (18) of section 155 before it came into force with effect from 1-4-2022, assessee would be entitled for immunity from imposition of penalty under section 270A though proceedings against it were initiated for imposition of penalty. On writ the Court held that since application filed by assessee under section 270AA seeking immunity from imposition of penalty had not been decided by Assessing Officer within prescribed time, impugned penalty order as well as demand notice issued under section 156 were to be set aside. (AY. 2020-21)
G. R. Infraprojects Ltd. v. ACIT (2024) 297 Taxman 231/336 CTR 249/470 ITR 382 (Raj.) (HC)

2814 **S. 270A : Penalty for under-reporting and misreporting of income- Immunity from imposition of penalty-Specific finding recorded in assessment order that assessee had under-reported income by misrepresenting facts in return of its income, application under section 270AA seeking immunity from imposition of penalty is not maintainable. [S. 270A(9), 270AA, Art. 226]**
Assessing Officer passed assessment order against assessee and also initiated penalty proceedings under section 270A(9)-Assessee filed an application seeking immunity from imposition of penalty under section 270AA. Assessing Officer rejected the application on ground that while computing income of assessee and its return of income, it had not just under-reported income, but also misrepresented facts claiming deduction of expenses, which were already self-disallowed, and therefore, it was a fit case for penalty proceedings under section 270A. It was also stated that penalty proceedings should be initiated separately under section 270A(9). On writ the court held that there was a specific finding recorded in assessment order that assessee had under-reported income by misrepresenting facts in return of its income, application under section 270AA seeking immunity from imposition of penalty is not maintainable. (AY. 2020-21)
IBS Software (P.) Ltd. v. UOI (2024) 297 Taxman 195/336 CTR 358 (Ker.)(HC)

S. 270A : Penalty for under-reporting and misreporting of income-Change of head of income-Income from house property-Business income-Penalty cannot bee levied for under reporting of income-[S. 22, 24(a), 28(i), 270A(6)(a)] 2815

Held that when the income offered for taxation under the head income from house property and the said income was assessed under the head profits and gains of business, it cannot be said to be the income is suppressed or under-reported any income. Penalty is deleted. (AY. 2017-18) (ITA No. 188/Mum/ 2023 dt. 17-10-2023)

D. C. Polyester Limited v. DCIT (2024) BCAJ-February-P. 42 (Mum)(Trib)

S. 270A:Penalty for under-reporting and misreporting of income-Incorrect reporting of interest income as appearing in 26AS-Enhanced claim under section 10(10)-Imposition of penalty is discretionary and not mandatory-Benefit of doubt must be given to the assessee-Penalty is deleted. [S. 10(10), 270A(6), Form No 26AS] 2816

Held that where the assessee has offered interest income as per Form 26AS and difference in interest income came to light post filing of ITR on account of delayed reporting by payer bank, same could not tantamount to under-reporting of income, it would not attract. Tribunal also held that if the enhanced claim of exemption under section 10(10) of the assessee on the basis of mistaken bona fide belief and the asseessee had disclosed all material facts. The Tribunal also held that imposition of penalty is discretionary and not mandatory. Penalty is deleted. (AY. 2017-18)

Ravindra Madukar Kharche v. ACIT (2024) 161 taxmann.com 712 (Nagpur)(Trib)

S. 270A : Penalty for under-reporting and misreporting of income-Charitable Trust-Depreciation on assets which are claimed as application of income-Bonfide error-Penalty is deleted. [S. 270A(9)] 2817

Held that claiming of depreciation on assets which are claimed as application of income, being bonafide error cannot be considered as misreporting of income. Penalty is deleted. (AY. 2018-19) (ITA No. 820/ Kol/ dt. 8-10-2024)

St. Peter's School v. ITO (2024) Chamber's Journal-November-P. 114 (Kol)(Trib)

S. 270A:Penalty for under-reporting and misreporting of income-Omission to file return-Sale of property TDS deducted-Penalty is deleted. [S. 139,194IA Form No 26AS] 2818

Held that the assessee was under a bona fide belief that she was not liable to pay taxes on the sale of property, when taxes had been withheld at source at the time of purchase by the purchaser of such property and the entire transaction was duly reflected in Form No. 26AS on the portal of the Department, which was within the knowledge of the IT Department. Department has not disputed the actual amount of sale consideration, which has been reported in Form No. 26AS-It would have been a different matter if the Department had alleged that there was a difference between the sale consideration as reflected in Form No. 26AS and the actual sale consideration. Not the case of misrepresentation or suppression of facts. Levy of penalty is deleted. Followed *Hindustan Steel Ltd. v. State of Orissa (1972) 83 ITR 26 (SC)* (AY. 2017-18)

Parulben Vijaykumar Patel v. ITO (2024) 230 TTJ 114 /239 DTR 33 / 163 taxmann.com 191 (Ahd)(Trib)

2819 **S. 270A:Penalty for under-reporting and misreporting of income-Failure to establish the genuineness of donors-Anonymous donations-The issue is restored to the AO with a direction to give one more opportunity to the assessee to substantiate its case with evidences to his satisfaction regarding the identity and creditworthiness of the donors and the genuineness of the transaction. [S. 270A(a)]**

The AO levied penalty under s. 270A(a) by treating 40 per cent of the donations as anonymous donations on the ground that the assessee-trust could not discharge the burden cast on it to establish the identity and genuineness of the donors at the time of assessment. On appeal the Tribunal held that the assessee contended that they are in a position to produce evidence to the satisfaction of the AO regarding the identity and genuineness of the donors, the issue restored to the AO with a direction to give one more opportunity to the assessee. (AY. 2017-18)

Adivasi Unnati Seva Mandal v. ACIT (E) (2024) 232 TTJ 51 (UO) (Pune) (Trib)

2820 **S. 270A:Penalty for under-reporting and misreporting of income--Difference between interest income offered to tax and income reported in Form No. 26AS-Disallowance of exemption-Penalty is deleted. [S. 10(10), Form No 26AS]**

Held that difference between interest income offered to tax and income reported in Form No. 26AS and denial of exemption. Penalty is deleted. (AY. 2017-18)

Ravindra Madhukar Kharche v. ACIT (2024) 229 TTJ 530 / 237 DTR 281 / 161 taxmann.com 712 (Nagpur)(Trib)

2821 **S. 270A:Penalty for under-reporting and misreporting of income- Closing stock-Difference in value-Inadvertent mistake cannot be considered as misreporting of income. [S. 44AB, 270A(8)]**

Held that the mistake was purely an oversight resulting in excess claim of depreciation, which was less than one per cent. of the returned income. The assessee had been declaring returned income of more than Rs. 100 crores and paying substantial taxes over the years. Therefore, this was a not a case of under-reporting or misreporting of income, within the meaning of section 270A. The action of the Assessing Officer in levying penalty under section 270A(8) at the rate of 200 per cent is unsustainable. The penalty is deleted. (AY. 2017-18)

ACIT v. Mahashian Di Hatti P. Ltd. (2024)114 ITR 44 (SN)(Delhi)(Trib)

2822 **S. 270A : Penalty for under-reporting and misreporting of income-Not specifying the limb-Levy of penalty is not valid. [S. 270A(8) 270A(9)]**

The AO levied penalty us 270A(8) of the Act wherein show cause notice was issued without specifying the corresponding limb in sub-sec. 270A(9) of the Act. The tribunal found in favor of the assessee, citing judicial precedents submitted by the Assessee and stating that the failure to specify the relevant limb at the initiation of the penalty proceedings invalidated the entire process. Consequently, the penalties were deleted for both assessment years. Delay in filing one of the appeals was condoned for reasons of justice. [ITA No. 708,1089/Pun/2023, dt. 02/02/2024] [AY 2017-18, AY 2018-19]

Shri Shivaji Dattatray Sonawane v. ITO (Pune)(Trib) (UR)

S. 270A:Penalty for under-reporting and misreporting of income-Mens rea must be present-Mere additions penalty cannot be imposed. [S. 40A(3), 270A(9)(d), 270AA] 2823
Held, that the additions and disallowances made by the Assessing Officer were not in the nature of misreporting of income. In misreporting of income, mens rea on the part of the assessee is required to be present. Wilful default constitutes misreporting of income. The assessee had inadvertently made a wrong claim but had disclosed the facts fully and truly. Penalty is deleted. (AY. 2017-18)
Punam Kanwar Bhati v. ITO (2024)113 ITR 750/229 TTJ 518/237 DTR 297 (Jodhpur) (Trib)

S. 270A:Penalty for under-reporting and misreporting of income-Gratuity-Claiming exemption-Public sector undertaking-Not Government-Maharashtra State Electricity Distribution Company Ltd-Levy of penalty is not valid. [S. 10(10AA)(ii), 270A(8)] 2824
The Assessee was an employee of an erstwhile state electricity board whose business was demerged to a public sector company. The assessee retired as an employee of Maharashtra State Electricity Distribution Company Ltd. and received a gratuity and leave encashment as his retirement benefit in the previous year. In his return for this year, the assessee claimed exemption of the sum received as gratuity u/s. 10(10)(i) and leave encashment u/s. 10(10AA)(ii) of the Act. On the ground that MSEB, was a public sector undertaking and not the Government, the AO restricted the exemption regarding gratuity and leave encashment, and the excess amount was disallowed. Treating the excessive claims as misreporting of income, the AO initiated penal proceedings for misreporting of income u/s. 270A at an accelerated rate of 200 percent of tax sought to evade u/s. 270A(8) of the Act. Held that the levy of penalty was not warranted for the reasons that, the service the assessee was a State Government employee whose employment by enforcement of the Electricity Act, 2003 and the Maharashtra State Electricity Distribution Company Employees Service Regulations, 2005 was converted into non-Governmental service. Therefore, the belief under which full exemption of retirement benefit was claimed in the return filed was not incorrect in its entirety and certainly, it was bona fide. Further, the explanation offered by the assessee in support of his mistaken but bona fide belief and all material facts of his service disclosed and the circumstances under which he claimed full exemption squarely fell within clause (a) of sub-section (6) of section 270A of the Act, and therefore pardonable; and finally, the imposition of penalty was at the discretion of the AO, since sub-section (1) of section 270A of the Act, refers to the word "may" and not "shall". The penalty imposed by the AO and confirmed by the CIT (A) at the accelerated rate was unwarranted. (AY. 2018-19)
Adinath Vasantrao Wandhekar v. ITO (2024) 111 ITR 28 (SN)/ 165 taxmann.com 288/229 TTJ 525/237 DTR 265 (Pune)(Trib.)

S. 270A:Penalty for under-reporting and misreporting of income-Penalty notice was only regarding underreporting of income-Penalty levied u for misreporting of income and under reporting-Not specifying the specific charge-Salary received is shown in the return-Penalty of Rs 44, 90,048 levied under section 270A(8) of the Act is deleted. [S. 139(9), 192, 270A(8), 270A(9)(e), 274, Form No. 26AS] 2825
The assessee filed the return of income and claimed the refund of tax deducted at source, though the salary income was not offered to tax. The Assessing Officer issued notice under section 139(9) to rectify the mistake however the return was not rectified.

In the course of assessment proceedings the Assessing Officer issued the notice u/s 143 (2) and made addition of Rs. 62,93,742 to the total income of the assessee. In the course of penalty proceedings the assessee contended that inadvertently gross salary was not shown in the return. The Assessing Officer levied the penalty of Rs. 44,90,048 under section 270A(8) of the Act. The penalty order is affirmed by the CIT(A). On appeal the assessee raised the additional grounds on jurisdictional issue. The Tribunal admitted the additional ground. After analysing the provisions the the Tribunal held that in the assessment order, the Assessing Officer initiated the penalty under section 270A of the Act, without mentioning any sub-clause of section 270A of the Act or specifying any limb of the penalty proposed to be levied. In the penalty notice issued he mentioned under reporting of income. Subsequently during penalty proceedings another notice was issued without specifying any limb or sub clause of section 270A of the Act. The penalty was levied for misreporting of the income as well as under reporting of the income as per section 270A(8) of the Act, with the aid of section 270A(9)(e) of the Act. The Tribunal held that there was no whisper at all in the notice issue under section 270A read with section 274 of the Act, about misreporting of income, whereas penalty has been levied for both under reporting of and misreporting of income @ 200 % in terms of section 270A(9) of the Act, for which show cause notice was never issued to the Assessee. Accordingly the penalty is deleted. Referred *Saltwater Studio LLF v. NFAC (Delhi)(ITA No. 13/ Mum/ 2023 dt 22-5-2023, Jain Marketing & Associates v. DCIT (2024) 162 taxmann.com 439(Delhi)(Trib)* (AY. 2019-20)(ITA No. 4134 /M/2023 dt 15-10 2024)
Manish Manohardas v. ITO (IT) (Mum)(Trib) www.itatonline.org

2826 **S. 270A:Penalty for under-reporting and misreporting of income-Excess depreciation claimed-Bonafide mistake-Penalty is deleted. [S. 139]**
Held that excess claim of depreciation was a bona fide mistake on the part of the assessee, hence the levy of penalty is not justified. (AY. 2017-18)(ITA No. 1923 /Mum/ 2023 dt 22-12 2023)
DCIT v. Sasan Power Ltd (2024) The Chamber's Journal-January-P. 117 (Mum)(Trib)

2827 **S. 270A:Penalty for under-reporting and misreporting of income-Not specifying the charge-Penalty levied for misreporting-Notice issued was under reporting of income-Levy of penalty is cancelled. [S. 274]**
Tribunal held that in the assessment order the Assessing Officer mentioned under reporting of Income. The show cause also refers under reporting of income. Penalty is levied for misreporting of income. Penalty is deleted. (AY. 2018-19)(ITA No. 238/Hyd/ 2024 dt. 2-4-2024)
Mohd. Sarwar v. ITO (2024) Chamber's Journal-May-P. 137 (Hyd)(Trib)

2828 **S. 270AA: Immunity from imposition of penalty,etc-Opportunity of hearing-Order passed without giving an opportunity of hearing is bad law-Order is set aside. [S. 264, 270A(9), 270AA(3), 270AA(4), Art. 226]**
On writ the order passed by the Assessing Officer and the Revision order without giving a proper opportunity of hearing is set aside. The very fact that the indications were made that the matter fall within clauses (a) and (c), necessarily means that even the revisional authority was not sure whether it was a case of misrepresentation or

suppression of facts or claim of expense, not substantiated by any evidence apparently. The order dt. 27th July, 2021 passed by the Dy. CIT and 13th March, 2023 passed by the revisional authority are quashed and set aside. (AY. 2018-19)
Chambal Fertilizers & Chemicals Ltd. v. PCIT (2024) 336 CTR 505(Raj)(HC)

S. 270AA: Immunity from imposition of penalty,etc-Income deemed to accrue or arise in India-Royalty-Application for immunity could not be rejected-Order rejecting the application is quashed-DTAA-India-USA [S. 9(1)(vi), 270A(9), 270AA(3), art. 12, Art. 226] 2829

Petitioner had received certain amount towards IT support services to its customers. Assessing Officer held that said receipts of assessee were liable to be taxed as royalty in terms of section 9(1)(vi) and DTAA, had issued show cause notices under section 270A for initiating consequential penalty proceedings. Petitioner moved an application to avail of statutory remedy as codified under section 270AA. Dy. Commissioner, however, rejected application for grant of immunity. Petitioner had duly complied with statutory pre-conditions set out in section 270AA(1). Notices in terms of which action under section 270A was initiated failed to specify whether petitioner was being tried on an allegation of under-reporting or misreporting. Court held that application for immunity could not be rejected and, therefore, impugned orders in terms of which application under section 270AA came to be rejected were liable to be quashed. (AY. 2018-19, 2019-20)
GE Capital US Holdings Inc. v. Dy. CIT (IT) (2024) 299 Taxman 108 / 468 ITR 746 (Delhi) (HC)

S. 270AA: Immunity from the imposition of penalty, etc-No opportunity of hearing-No evidence to show misrepresentation of income or suppression of facts-Voluntary disclosure by the assessee and the failure of the authorities to properly apply the provisions, the court quashed the penalty order. [S. 264, 270A(9), 270AA(4), Art. 226] 2830

During the assessment proceedings, the assessee relied on the fact that the "provision for doubtful GST input tax credit" was claimed in the expense account, and the deduction was claimed in the return of income. The assessee, suo moto, surrendered the amount by revising its return of income and adding it back to the total income. The Assessing Officer passed an assessment order and imposed a penalty under Section 270A for misreporting of income. The assessee filed an application under Section 270AA against the penalty order. The Assessing Officer rejected the application. The assessee challenged the order on the grounds that no opportunity for a hearing was provided.
The court noted that the authorities had not detected the said aspect and that the assessee had voluntarily offered the amount. Regarding the application under Section 270AA, the assessee was not granted an opportunity for a personal hearing. The rejection of the application was a non-speaking order. From the order, it was evident that the authorities were uncertain whether it was a case of misrepresentation of income, suppression of facts, or an erroneous claim of expenses. Considering the voluntary disclosure by the assessee and the failure of the authorities to properly apply the provisions, the court quashed the impugned order. (AY. 2018-19)
Chambal Fertilizers and Chemicals Ltd. v. PCIT [2024] 297 Taxman 168 / 462 ITR 4 (Raj)(HC)

2831 **S. 271(1)(b) : Penalty-Failure to comply with notices-Non appearance was not with any malafide intention-Penalty is deleted. [S. 142(1), 271B]**
Held that the assessee, an illiterate person, having not put up appearance in response to the notices under s. 142(1) issued by the AO acting on the advice of a tax professional, there was a reasonable cause for not making due compliance of the notices and, therefore, it is not a fit case for levy of penalty under s. 271(1)(b). (AY. 2015-16 to 2017-18)
Kaushik Pra Vinchandra Gohel v. AO (2004) 231 TTJ 1 (UO) (Ahd)(Trib)

2832 **S. 271(1)(c) : Penalty-Concealment-Not specifying the charge-Order of Tribunal deleting the penalty is affirmed-SLP of Revenue is dismissed. [Art. 136]**
Dismissing the appeal of the Revenue the High Court held that the question raised in this appeal had been answered against it by the court in *CIT v. Manjunatha Cotton and Ginning Factory [2013] 359 ITR 565 (Karm)(HC)*. Followed *CIT v. SSA's Emerald meadows (2016) 386 ITR 13 (St).* SLP of Revenue dismissed, question of law is kept open. (AY. 2007-08)
CIT v. State Bank Of Mysore (2024)471 ITR 761 (SC)
Editorial : CIT v. State Bank Of Mysore (2024)471 ITR 760 (Karm) (HC)

2833 **S. 271(1)(c) : Penalty-Concealment-Not specifying the specific limb-Delay of 202 days-Delay is not satisfactorily explained-SLP of Revenue is dismissed. [Art. 136]**
High Court held that where penalty notice issued against assessee did not advert to specific limb of section 271(1)(c) and, thus, Assessing Officer was not clear whether he intended to levy a penalty upon assessee for concealment of particulars of his income or furnishing inaccurate particulars, Tribunal was justified in quashing penalty proceedings under section 271(1)(c) initiated against assessee. Since there was a gross delay of 202 days in preferring SLP against said order and explanation offered for said delay was also not satisfactory and neither was it sufficient in law to condone same, application seeking condonation of delay was to be dismissed and, consequently, Special Leave Petition was also to be dismissed on ground of delay. (AY. 2008-09 to 2011-12)
PCIT v. Shyam Sunder Jindal (2024) 300 Taxman 90 (SC)
Editorial : PCIT v. Shyam Sunder Jindal (2024) 296 Taxman 115/ 462 ITR 501 (Delhi) (HC)

2834 **S. 271(1)(c) : Penalty-Concealment-Not specifying the specific charge-High Court affirmed the order Tribunal-SLP of Revenue is dismissed. [S. 274, Art. 136]**
Assessing Officer made additions to assessee's income and triggered penalty proceedings under section 271(1)(c) and further levied penalty. Tribunal held that notice issued under section 274 did not specify as to limb under which penalty was sought to be imposed, i. e., notice did not indicate as to whether penalty was to be levied on account of concealment of income or for reason that assessee had furnished inaccurate particulars quashed penalty proceedings. High Court held that where Assessing Officer had triggered penalty proceedings under section 271(1)(c) against assessee, it was necessary for him to indicate broadly as to limb under which penalty proceedings were triggered. Accordingly it held that no substantial question of law arose for consideration

against order of Tribunal. Special leave petition filed against order of High Court is dismissed. (AY. 2012-13)
PCIT v. Unitech Reliable Projects (P.) Ltd. (2024) 300 Taxman 585 / 469 ITR 394 (SC)
Editorial : PCIT v. Unitech Reliable Projects (P.) Ltd (2023) 294 Taxman 507/ (2024) 462 ITR 307 (Delhi)(HC)

S. 271(1)(c) : Penalty-Concealment-Furnishing inaccurate particulars of income-Sundry credits-Burden of proof on assessee-Order of Tribunal affirming the levy of penalty is affirmed by High Court-SLP is dismissed [S. 68, Art. 136] 2835
High Court held that the Tribunal was not erroneous in adopting the finding arrived at in the assessment proceedings especially in the context of no material having been placed before the Assessing Officer to substantiate the sundry credits claimed. The mere disclosure of the name and addresses of the sundry creditors could not lead to substantiation of the credits especially when there was no evidence produced regarding the transactions which led to the credit. The mere acceptance of the entirety of the purchases in the appeal would not lead to substantiation of the credits claimed, since the purchases which led to the credit, had not been established before the Assessing Officer. There was no material available on record before the Assessing Officer, the Commissioner (Appeals) or the Tribunal, to take a contrary decision except to confirm the penalty levied under section 271(1)(c). SLP is dismissed.
Ram Chandra Singh v. CIT (2024)466 ITR 260 /164 taxmann.com 668/300 Taxman 180 (SC)
Editorial : Ram Chandra Singh v. CIT (2024)466 ITR 251 /164 taxmann.com 667 (Pat) (HC)

S. 271(1)(c) : Penalty-Concealment-Furnishing inaccurate particulars of income-Subsidy-Capital or revenue-Debatable issue-Order of High Court deleting the penalty is affirmed-SLP of Revenue is dismissed. [Art. 136] 2836
On appeal High Court held that there was no dispute about the quantum of receipt of grant-in-aid from the State Government, that the assessee had reflected the receipt as a capital receipt, whereas it had been treated as a revenue receipt, that whether the grant-in-aid was a capital or a revenue receipt was a debatable issue, that there was no furnishing of inaccurate particulars, and that therefore, penalty could not be imposed. SLP of Revenue is dismissed. (AY. 2003-04)
CIT v. Gurdaspur Co-Operative Sugar Mills Ltd. (2024)461 ITR 208 /297 Taxman 384 (SC)
Editorial: CIT v. Gurdaspur Co-operative Sugar Mills Ltd (2013) 354 ITR 27 / 216 Taxman 186 (Mag.) (P&H)(HC)

S. 271(1)(c) : Penalty-Concealment-Depreciation –Appeal settled under Direct Tax Vivad se Vishwas Scheme-SLP became infructuous. [Art. 136] 2837
High Court held that where assessee had claimed depreciation on leased assets and such claim was backed by material on record, penalty under section 271(1)(c) could not be imposed merely because claim of depreciation was not acceptable in law. Since matter had been amicably settled between parties under Direct Tax Vivad se Vishwas Scheme, SLP filed against impugned order of High Court became infructuous. (AY. 2009-10)
PCIT v. Indusind Bank Ltd. (2024) 297 Taxman 139 (SC)
Editorial: PCIT v. Indusind Bank Ltd(2019) 105 taxmann.com 391 (Bom)(HC)

2838 **S. 271(1)(c) : Penalty-Concealment-Tax audit report mentioned the disallowance of expenses-Mistake while uploading the return-Department appeal is dismissed. [S. 139, 260A, 274]**
Dismissing the appeal of the Revenue the Court held that there was no intention of furnishing any inaccurate particulars or concealment of income. Mere mistake while up loading the return, levy of penalty is not justified. (AY. 2010-11)
PCIT v. Pinstorm Technologis Pvt Ltd (2024) 158 taxmann.com 511 (Bom)(HC)

2839 **S. 271(1)(c) : Penalty-Concealment-Not specifying the charge-Order of tribunal deleting the penalty is affirmed. [S. 260A]**
Dismissing the appeal of the Revenue the Court held that the question raised in this appeal had been answered against it by the court in *CIT v. Manjunatha Cotton and Ginning Factory [2013] 359 ITR 565 (Karm)(HC)*. (AY. 2007-08)
CIT v. State Bank Of Mysore (2024)471 ITR 760 (Karm) (HC)
Editorial : SLP of Revenue is dismissed, question of law is kept open, CIT v. State Bank Of Mysore (2024)471 ITR 761 (SC) (HC)

2840 **S. 271(1)(c) : Penalty-Concealment-Capital gains-Additional income is accepted in the revised return-Penalty notice not specifying the charge-Order of Tribunal deleting the penalty is affirmed. [S. 143(1), 148]**
Dismissing the appeal of the Revenue the Court held that the assessee had disclosed error before notice under section 148 was issued, thus preventing concealment of income A satisfactory explanation has been offered by assessee, well before issuance of a notice to him under section 148 and admission of additional income made by assessee has been accepted by revenue. Honesty of assessee in disclosing mistake and paying differential tax before assessment would not attract penalty provisions under section 271(1)(c). Court also held that when the penalty notice has not specified the charge, deletion of penalty by the Tribunal is justified. (AY. 2011-12)
PCIT v. Ambady Krishna Menon (2024) 471 ITR 366 /163 taxmann.com 141 (Ker) (HC)

2841 **S. 271(1)(c) : Penalty-Concealment-Capital gains-Deduction is rejected-Levy of penalty is justified-Undisclosed income-Gift received from non-Resident-Penalty is justified. [S. 54B, 54F, 69, 158BC]**
Held that in respect of the addition on account of disallowance of claim of capital gains under section 54B and section 54F for which penalty was imposed, in the assessment order it was found that capital gains were dis-closed in the original return filed but no deductions were claimed under S. 54B and 54F, penalty is deleted. However as regards gift received from his brother as the assessee failed to prove the receipt, levy of penalty is affirmed. (AY. 1996-97 to 2002-03)
Bishwajit Pandey v. ACIT (2024)471 ITR 509 (Pat) (HC)

2842 **S. 271(1)(c) : Penalty-Concealment-Bonafide claim-Disallowance of interest-Order of Tribunal deleting the penalty is affirmed. [S. 36(1)(vii)]**
Dismissing the appeal of the Revenue the Court held that where the assessee having made a bona fide claim under section 36(1)(viii) and merely because there was variance in deductions allowable due to change in determination of business profit, it could

not be said that assessee had furnished inaccurate particulars of income or concealed particulars of income. Relied on CIT v. Reliance Petro Products Pvt Ltd (2010) 322 ITR 158 (SC) (AY. 1999-2000)
PCIT v. ICICI Bank Ltd [2024] 161 taxmann.com 454 (Bom) (HC)

S. 271(1)(c): Penalty-Concealment-Capital gains-Additional income offered before issue of notice under section 148-Additional income cannot be treated as concealed income-Honesty of assessee in disclosing mistake and paying differential tax before assessment would negate grounds for imposing a penalty-Deletion of penalty is affirmed-[S. 45, 131, 143(1), 143(3), 147 148] 2843

The assessee filed a return for the assessment year 2011-12, declaring an income and a capital gain, which was processed under Section 143(1). The Revenue suspected suppression of capital gains and issued a summons under Section 131 on 19.05.2014. A penalty notice was issued without specifying whether it was for concealment of income or furnishing inaccurate particulars, and the Assessing Authority imposed a penalty. the notice proposing penalty, that was issued to the respondent/assessee, was inherently defective, in that, it had not specified the particular ground on which the Revenue was proceeding against the assessee for the imposition of the penalty. The Explanation clearly envisages that where a satisfactory explanation has been offered by the assessee, well before the issuance of a notice to him under Section 148 and the admission of additional income made by the assessee has been accepted by the Revenue which completed the assessment under Section 143 read with Section 147 on that basis, the explanation offered by the assessee with regard to the differential income has to be been seen as accepted by the Revenue for the purposes of the Explanation under Section 271. Axiomatically, therefore, the said additional income cannot be treated as concealed income for the purposes of Section 271(1)(c). (AY. 2011-12)
PCIT v. Ambady Krishna Menon [2024] 163 taxmann.com 141 (Ker)(HC)

S. 271(1)(c) : Penalty-Concealment-Revised return filed voluntarily-Search-No deliberate or wilful omission on part of assessee-Review petition is allowed-Professional doctor and levying penalty on him would effect his mental status as well as professional career, order of Tribunal sustaining levy of penalty is set aside. [S. 132, 139(5), 148, 260A, Civil Procedure Code, 1908, Order XLVII of Rule 1] 2844

Assessee is a doctor in Apollo Hospitals. Assessing Officer levied penalty under section 271(1)(c) upon assessee. Tribunal sustained levy of penalty. On appeal the Court held that since assessee before issuance of notice under section 148 had filed revised returns of income voluntarily and material collected during search conducted under section 132 upon Apollo Hospitals was never put to assessee prior to his filing of voluntary revised returns and there was no material to show that assessee was aware of documents collected in premises of Apollo Hospitals, there was no deliberate or wilful omission on part of assessee. Since assessee is a professional doctor and levying penalty on him would effect his mental status as well as professional career, order of Tribunal sustaining levy of penalty is set aside. (AY. 2003-04 to 2005-06)
S. Duraisamy v. Dy. CIT (2024) 300 Taxman 548 /243 DTR 204 /(2025) 342 CTR 662 (Mad.)(HC)

2845 **S. 271(1)(c) : Penalty-Concealment-Not specifying the charge-Order of Tribunal quashing the penalty is set aside and directed the Tribunal to decide on merits-Interpretation of statutes-Rule of literal construction. [S. 260A, 271(IB), Expln. 5A, 274]** After the search and seizure operations and impounding of documents, the assessee declared certain undisclosed income which was added to the income disclosed in the returns apart from certain other additions. In the assessment order, the Assessing Officer mentioned that penalty proceeding under section 271(1)(c) had been initiated and show cause notice under section 274 for imposing penalty under section 271(1)(c) read with Explanation 5A was being issued separately. The assessment orders were followed by notices under section 271(1)(c) read with section 274. The respondent/assessee participated in the penalty proceedings for both the assessment years i. e. assessment years 2006-07 and 2007-08 and made submissions. The Assessing Officer considered the submissions of the assessee and imposed a penalty under section 271(1)(c) read with Explanation 5A for both the assessment years. The Commissioner (Appeals) dismissed the assessee's appeal against levy of penalty. The Tribunal cancelled the penalty on the ground that the show cause notice under section 274 was defective as it did not spell out the grounds on which the penalty was sought to be imposed. On appeal by Revenue the Court held that when Assessing Officer had recorded in assessment order particulars of concealed income/undisclosed income of assessee and on that basis initiated penalty proceeding under section 271(1)(c), then consequential notice under section 274 issued by Assessing Officer to assessee to afford him opportunity of hearing, was specifically a notice for penalty for concealment of particulars of income/undisclosed income. Such a notice complied with principles of natural justice and was a valid notice under section 274 and Tribunal had committed a manifest error of law by setting aside penalty orders on ground that grounds for imposition of penalty were not mentioned in show cause notice under section 274 and thus, show cause notice was defective. A fiscal statute has to be interpreted on the basis of language used therein and not dehors the same. No words ought to be added or deleted. Only the language used in the statute ought to be considered so as to ascertain proper meaning and intent of the legislation. The court is to ascribe natural and ordinary meaning to the words used by the legislature and the court ought not, under any circumstances, to substitute its own impressions and ideas in place of legislative intent as is available from a plain reading of the statutory provisions, vide *Orissa State Warehousing Corpn. v. CIT (1999) 103 Taxman 623/237 ITR 589/ /4 SCC 197* (para 40). When the language is plain and unambiguous and admits of only one meaning, no question of construction of a statue arises, that the Act speaks for itself vide *State of Uttar Pradesh v. Dr. Vijay Anand Maharaj AIR 1963 SC 946 and Arul Nadar v. Authorised Officer, Land Reforms [1998] 7 SCC 157 (para 5)*. It is well known principle of construction of a statute that when the language used in the statute is unambiguous and on a plain grammatical meaning being given to the words in the statute, the end result is neither arbitrary nor irrational nor contrary to the object of the statue, then it is the duty of the court to give effect to the words used in the statue as the words declare the intention of the law making for best vide *Jagdish Ch. Patnaik v. State of Orissa [1998] 4 SCC 456 (para 24). In Molar Mal v. Kay Iron Works (P.) Ltd. [2000] 4 SCC 285 (Para 12,15)* Hon'ble Supreme Court observed that normally the courts will have to follow the rule of literal construction which rule enjoins the court to take

the words as used by the legislature and to give it the meaning which naturally implies. An exception to this rule is that when an application of literal construction of the words in the statue leads to absurdity, inconsistency or when it is shown that the legal context in which the words are used or by reading the statue as a whole it requires a different meaning. In view of these settled principles of law, provisions of the Explanation 5A to Section 241(1) has to be given full effect. The order of Tribunal is to be set aside and the matter is to be remanded to the Tribunal with direction to decide same on merit, in accordance with law. (AY-2006-07, 2007-08)
PCIT v. Thakur Prasad Sao & Sons (P) Ltd. (2024) 340 CTR 10 / 238 DTR 313 / 163 Taxmann.com 449 (Cal)(HC)

S. 271(1)(c) : Penalty-Concealment-Capital gains-Higher valuation as per S. 50C-Merely because higher valuation-Levy of penalty is not valid. [S. 45, 50C, 245C, 245D, Art. 226] 2846
The Settlement Commission imposed penalty u/s 271(1)(c) for accepting higher valuation of property as per section 50C of the Act. On writ allowing the petition the Court held that merely because addition may be made on the quantum side by invoking S. 50C, it did not itself establish that such estimated consideration had actually passed on to the assessee. Therefore, no conclusion of concealment may have arisen solely occasioned by that estimation of income by way of capital gains made by the Settlement Commission. In the absence of any independent evidence to establish receipt of extra consideration and in the absence of any finding to reject the explanation furnished by the assessee, both as to ignorance of the sale deed executed by his Power of Attorney and also with respect to the actual consideration received, element of concealment was not established. Accordingly, the levy of penalty under s. 271(1)(c) under the order dt. 27th Oct., 2010 passed by the Settlement Commission, is set aside. (AY. 2007-08)
Rajendra Prasad Agarwal v. ITSC (2024) 339 CTR 1/ 161 taxmann.com 638 (All) (HC)

S. 271(1)(c) : Penalty-Concealment-Furnishing inaccurate particulars of income-Sundry credits-Burden of proof on assessee-Order of Tribunal affirming the levy of penalty is affirmed. [S. 68, 260A] 2847
Held that the Tribunal was not erroneous in adopting the finding arrived at in the assessment proceedings especially in the context of no material having been placed before the Assessing Officer to substantiate the sundry credits claimed. The mere disclosure of the name and addresses of the sundry creditors could not lead to substantiation of the credits especially when there was no evidence produced regarding the transactions which led to the credit. The mere acceptance of the entirety of the purchases in the appeal would not lead to substantiation of the credits claimed, since the purchases which led to the credit, had not been established before the Assessing Officer. There was no material available on record before the Assessing Officer, the Commissioner (Appeals) or the Tribunal, to take a contrary decision except to confirm the penalty levied under section 271(1)(c).
Ram Chandra Singh v. CIT (2024)466 ITR 255 / 164 taxmann.com 667 (Pat)(HC)
Editorial : SLP of assesee is dismissed, Ram Chandra Singh v. CIT (2024)466 ITR 260 /164 taxmann.com 668 (SC)

2848 **S. 271(1)(c) : Penalty-Concealment-Furnishing inaccurate particulars-Order of penalty should clearly specify ground on which it is levied. [S. 260A]**
Dismissing the appeal the Court held that the conclusion reached by the Tribunal that the notice for imposition of penalty under section 271(1)(c) of the Act did not specify under which limb of the provision the penalty was sought to be levied was correct. The deletion of penalty is justified. (AY. 2007-08)
PCIT v. Minu Bakshi (Ms.) (2024)462 ITR 301 (Delhi)(HC)

2849 **S. 271(1)(c) : Penalty-Concealment- Bonafide error – Foreign exchange rate difference - Wrong claim of deduction- Corrected in the course of assessment - Merely making the wrong claim of deduction, penalty cannot be levied- Order of Tribunal deleting the penalty is affirmed. [S. 32(1)(ii), 32(1)(iia), 43A, 143(3), 260A]**
Assessee had claimed foreign exchange fluctuation loss under head finance charges of profit and loss account. During scrutiny proceedings Assessing Officer held that under provision of section 43A foreign exchange fluctuation loss was to be allowed on payment basis and was to be reduced/increased from corresponding cost of relevant plant and machinery. Assessee had admitted that due to bona fide error it wrongly claimed foreign exchange rate difference as an expense and after accepting said mistake it claimed depreciation on increased cost of plant and machinery, qua which foreign currency fluctuation loss had been incurred. The Assessing Officer disallowed depreciation on account of increase in cost of plant and machinery by amount of foreign exchange fluctuation of as per provision of section 43A read with section 32(1)(ii) & (iia). The Assessimg Officer levied penalty under section 271(1)(c) on account of wrong claim or incorrect computation made by assessee in statement of income. CIT(A) deleted the penalty. On appeal Tribunal affirmed the order of the Tribunal. On appeal by Revenue the Court held that since assessee could not have gained anything by claiming foreign currency fluctuation loss as deductible expenditure, as it would have only added to existing burgeoning losses and once error was pointed out by Assessing Officer, assessee made a course correction before assessment order was passed. Order of the Tribunal is affirmed, on the ground that merely making the wrong claim of deduction, penalty cannot be levied.(AY. 2009-10)
PCIT v. National Textiles Corporation Ltd (2023) 151 taxmann.com 512 / 226 DTR 281 / (2024)462 ITR 224 (Delhi)(HC)

2850 **S. 271(1)(c) : Penalty-Concealment-Not specifying the charge-Order of Tribunal quashing the penalty is affirmed. [S. 260A]**
Held that Assessing Officer while initiating penalty proceedings under section 271(1)(c), should have alluded to limb under which penalty is proposed to be levied, i.e., should have stipulated as to whether penalty was proposed to be imposed on assessee for concealment of particulars of its income, or furnishing inaccurate particulars. Assessing Officer had not specified under which limb of section 271(1)(c) penalty was initiated, Tribunal had rightly set aside penalty order. (AY. 2014-15)
PCIT v. Blackroak Securities (P.) Ltd. (2024) 297 Taxman 69 (Delhi)(HC)

S. 271(1)(c) : Penalty-Concealment-Capital gains-Order of Tribunal deleting the penalty is affirmed. [S. 260A] 2851

Assessee was engaged in business of trading in shares. It had declared an income on sale of long term investments under head capital gain. Assessing Officer, treated said income as business income. He also levied penalty under section 271(1)(c) on ground that assessee had produced inaccurate particulars of income. Tribunal held that since assessee had not suppressed amount in question and had disclosed it in its return, merely because he declared it under a particular head of income, and Assessing Officer chose to treat same under some other head, assessee could not be accused of furnishing incorrect particulars of income or suppressing facts and, therefore, penalty under section 271(1)(c) is not leviable. High Court affirmed the order of the Tribunal. (AY. 2002-03)

PCIT v. Ankita Deposits & Advances (P.) Ltd. (2024) 297 Taxman 46 /338 CTR 860 (HP) (HC)

S. 271(1)(c) : Penalty-Concealment-Furnishing Of Inaccurate Particulars-Notice not specifying the charge-Failure to specify the charge-Order of Tribunal deleting the penalty is affirmed. [S. 260A, 274, 275(1)(a)] 2852

Held, dismissing the appeal the Court held that the notice under section 274 of the Act showed that the Assessing Officer did not indicate to the assessee as to whether this was a case of concealment of particulars or furnishing inaccurate particulars or the case where both charges were sought to be levelled against the assessee. The penalty order, as a matter of fact, injected greater confusion. There was obviously an internal inconsistency in the penalty order. The Assessing Officer stated that the assessee had furnished inaccurate particulars of its income in respect of disallowance of various additions made by the Assessing Officer and then, while computing the penalty that he imposed on the assessee, he stated that the assessee had furnished inaccurate particulars of income or concealed income. There was obviously no clarity in the mind of the Assessing Officer as to which limb of section 271(1)(c) of the Act got attracted for initiation, followed by imposition of penalty. No substantial question of law arose for consideration. (AY. 2003-04)

PCIT v. Modi Rubber Ltd. (2024)462 ITR 319 /296 Taxman 381 (Delhi)(HC)

S. 271(1)(c) : Penalty-Concealment-Ground raised first time before High Court-After 23 years-Defects in the Notice-Principle of natural justice cannot be raised after 23 years-Assessee participated whole heartedly in the penalty proceedings, however, later on before the High Court raised the objection in regard to the defect in notice-The assessee had understood the contents of the notice as to which two limbs falling u/s 271(1)(c) and complied with the SCN without raising any objection-Assessee not permitted to raise the question of fact before the Court-Hence, the Revenue's appeal allowed. [S. 260A, 274, Art. 226] 2853

Income assessed u/s 143(3). The original assessment was set aside by the CIT (Appeals). The order to that effect passed by the AO at the income assessed denying the claim of brought forward unabsorbed losses of the earlier years. Based on such assessment, the AO initiated the penalty u/s 271(1)(c). In the meantime, the CIT (Appeals) deleted the additions. The department filed the second appeal before the Tribunal. ITAT set aside and restored the order of the AO, thereby allowing the department's appeal.

Order u/s 271(1)(c) passed. The appeal before the CIT (Appeals) has been allowed. The department filed the second appeal before the Tribunal, decided in favour of the department. Before the Court, for the first time, the assessee raised the issue of defective notice as to the limbs of section 271(1)(c). The Court held that it is not a e question of law but a question of fact, at no point of time, the assessee had a grievance to the notice being in any manner vague, ambiguous and not being understood by the assessee in regard to the limbs u/s 271(1)(c). The judgment in *Ventura Textiles Ltd. v. CIT (2020) 117 taxmann.com 182 / 274 Taxman 144 / 426 ITR 478 (Bom) distinguished. Referred, Mohd. A Farhan. A. Shaik v. Dy. CIT (2021) 434 ITR 1 (Bom) (HC)(FB)* (AY. 1984-85)
Veena Estate (P.) Ltd. v. CIT (2024) 158 taxmann.com 341 / 461 ITR 483 /336 CTR 688 (Bom)(HC)
Editorial : Refer, Veena Estate Pvt. Ltd. v CIT (2025) 475 ITR 115 /171 taxmann.com 472 (Bom)(HC)

2854 **S. 271(1)(c): Penalty-Concealment-Annual letting value-Debatable issue-Not specifying the charge-Order of Tribunal deleting the penalty is affirmed. [S. 22, 23, 274]**
Dismissing the appeal of the Revenue the Court held that the penalty notice did not indicate which of the two limbs of S. 271(1)(c), i. e., concealment of income or furnishing of inaccurate particulars of income, was triggered in assessee's case. The other issue which was ruled in favour of the assessee in prior years and reversal of trend happened only when in the High Court ruled differently. Held, it was a debatable issue and no penalty could be levied. Order of Tribunal is affirmed. (AY. 2011-12)
PCIT v. Ansal Properties & Infrastructure Ltd (2024) 296 Taxman 470/463 ITR 85 (Delhi) (HC)

2855 **S. 271(1)(c): Penalty-Concealment-Not specifying the charge-Order of Tribunal deleting the penalty is affirmed. [S. 260A]**
AO passed penalty order under section S. 271(1)(c) for furnishing inaccurate particulars of income or concealment of income. The Hon'ble Tribunal deleted the penalty holding that there was non-application of mind as the order did not tick the relevant clause of 'concealment of income' or 'furnishing of inaccurate particulars of income'. The Hon'ble Delhi High Court observed that the penalty order, as a matter of fact, injects greater confusion in this behalf and that there was obviously no clarity in the mind of the Assessing Officer as to which limb of section 271(1)(c) got attracted in the instant case for initiation, followed by imposition of penalty. Hence, the decision of the tribunal was upheld. (AY. 2003-04)
PCIT v. Modi Rubber Ltd. [2023] 157 taxmann.com 588 /(2024) 296 Taxman 381 (Delhi) (HC)

2856 **S. 271(1)(c): Penalty-Concealment-Not specifying the specific charge-Reason for levying penalty unclear-Order of Tribunal deleting the penalty is affirmed. [S. 260A, 274]**
Appeal filed by revenue against common order of the Hon'ble Tribunal deleting penalty as it was unclear that a penalty on the respondent/assessee is levied for concealment of particulars of his income or furnishing inaccurate particulars. The Hon'ble Court held

that this issue is covered in a catena of judgments, therefore, the Tribunal was justified in quashing the penalty proceedings. (AY. 2008-09, 2009-10, 2010-11, 2011-12)
PCIT (Central-3) v. Shyam Sunder Jindal [2023] 156 taxmann.com(2024) 296 Taxman 115 / 462 ITR 501 (Delhi)(HC)
Editorial : SLP of Revenue is dismissed as the delay of 202 days in preferring SLP against the order of High Court is not satisfactorily explained, PCIT v. Shyam Sunder Jindal (2024) 300 Taxman 90 (SC)

S. 271(1)(c) : Penalty-Concealment-Not specifying the charge-Satisfaction is sine qua non for initiation of proceeding and penalty proceedings-Order of Tribunal affirming the penalty is set aside. [S. 260A, 274] 2857
The assessee filed its return of income for the AY 2014-15. The assessee had issued equity shares at premium. The assessing officer made addition to the total income of the assessee on the ground that the aggregate consideration for shares exceeded the fair market value. A notice under section 274 read with section 271(1)(c) was issued to the assessee on ground that assessee had 'furnished inaccurate particulars of income.', whereas the assessment order mentioned that the penalty should be imposed as it had 'concealed particulars of its income'.
Upon appeal to the High Court, it was held that the assessment order passed, and the penalty levied was on the ground that assessee has 'concealed particulars of its income' whereas the ground on which the notice under section 274 was issued on account of 'have furnished inaccurate particulars of income', without striking off the former ground in the notice. For initiation of penalty proceeding under section 271(1)(c) the satisfaction recorded should be on an existing ground on which the notice is issued. In this case the satisfaction recorded in the assessment order is regarding concealment of income, thereby the penalty order was not sustainable in law. (AY. 2014-15)
Kshema Geo Holdings (P.) Ltd. v. ITO [2023] 151 taxmann.com 293 / (2024) 460 ITR 203 (Karn)(HC)

S. 271(1)(c) : Penalty-Concealment-Bogus purchase-Addition made on estimate basis-Penalty is not leviable-Omission to strike off one of the twin charges in the notice-Not invalidate penalty proceedings. [S. 69C, 274] 2858
Tribunal deleted penalty on merit as regards addition is made on alleged bogus purchases on estimate basis. Tribunal also held that omission to strike off one of the twin charges in the notice cannot invalidate penalty proceedings. Followed, *Veena Estate (P) Ltd. v. CIT (2024) 336 CTR 688/ 461 ITR 483 (Bom)(HC).* (AY. 2009-10, 2010-11)
Dinesh Somatmal Dhokar v. ITO (2024) 230 TTJ 137 / 240 DTR 111 / 38 NYPTTJ 647 (Mum)(Trib)

S. 271(1)(c) : Penalty-Concealment-No incriminating material during search-Additional income declared is accepted-Foreign bank account-Explanation 5A to section 271(1)(c) is not applicable-Penalty is deleted. [S. 153A, Art.] 2859
Held that the assessee has accepted the relevant documents as genuine and disclosed additional income in respect of Foreign bank account. Therefore Explanation 5A to section 271(1)(c) is not applicable. Penalty is deleted. (AY. 2006-07 to 2012-13)
Rajinder Kumar v. ACIT (2024) 232 TTJ 261 / 243 DTR 297 / 38 NYPTTJ 776 (Delhi)(Trib)

2860 **S. 271(1)(c) : Penalty-Concealment-Deductions under sections 80C, 80CCF, 80D, 80DD and 80G ST and loss under the head Income from House Property-Return was filed after time-limit prescribed under s. 139(4) and was invalid return-Re assessment notice-Returned income and assessed income is same-Penalty is deleted. [S. 139(4), 147, 148]**
Held that since the Revenue has accepted the income declared by assessee without any adjustment, assessee is not liable for penalty under s. 271(1)(c) even though he had declared lesser income in the original return by claiming erroneous deductions under chapter VI-A. Followed *CIT v. Pushpendra Surana (2013) 96 DTR 231. (2014) 264 CTR 204 (Raj)(HC) Cheldas Khushalas Patel & Ors. v. CIT (1992) 103 CTR 1 / 196 ITR 200 (Gul)(HC). Distinguished Mak Data (P) Ltd, v. CIT (2013) 94 DTR 379/ 263 CTR1 (SC).* (AY. 2012-13 to 2016-17)
Ajoy Sharma v. Dy. CIT (2024) 232 TTJ 81 (UO) (Jaipur)(Trib)

2861 **S. 271(1)(c) : Penalty-Concealment-Not specifying the charge-Penalty is deleted. [S. 270A, 274]**
Held that the charge framed by the AO is that there is under reporting of income however the penalty levied under section 271(1)(c) without mentioning whether it is a case of concealment of income or furnishing of inaccurate particulars of income. Penalty is deleted. (AY. 2013-14 to 2016-17)
Sree Navaladiyan Finance v. Dy. CIT (2024) 231 TTJ 192 (Chennai)(Trib)

2862 **S. 271(1)(c) : Penalty-Concealment –NCLT approved the plan-Penalty levied does not survive-Penalty is deleted. [S. 156, Insolvency and Bankruptcy Code 2016. 30(2), 31(1), 238]**
Held that NCLT having approved the resolution plan on an application filed by the assessee under S. 31(1) of Insolvency and Bankruptcy Code, 2016, settling the operational creditors including income-tax at Nil, and the Supreme Court having confirmed the order of the NCLT thereby approving the resolution plan, penalty under s. 271(1)(c) imposed by the AO on the assessee is not sustainable. (AY. 2013-14 2014-15)
Orchid Pharma Ltd v. ACIT (2004) 232 TTJ 125 (UO) (Chennai)(UO) (Trib)

2863 **S. 271(1)(c) : Penalty-Concealment-Disallowance of excess brought forward losses pursuant to MAP order-Revised computation filed-Time for filing revised return has expired-Paid additional tax along with interest-Penalty is deleted. [S. 143(2), 139(1), 139(5)]**
Tribunal held that that the disallowance of excess brought forward losses pursuant to MAP order while giving effect the to the MAP resolution in assessee's case for asst. yr. 2012-13 which resulted in change in the loss carried forward for set off in the subsequent years including the relevant asst. yr. 2016-17. Merely because the assessment order was passed on the basis of addition/disallowances and the assessee agreed to the addition and already paid the taxes along with the interest way before the initiation of the assessment proceedings, it could not be inferred that the assessee furnished inaccurate particulars of income. The explanation was a not found to be false. On the contrary it was held to be bona fide. Levy of penalty is deleted. (AY. 2016-17)
DCIT v. Mitsubishi Heavy Industries VST Diesel Engines (P) Ltd. (2024) 230 TTJ 298 / 240 DTR 26 / 38 NYPTTJ 717/ 163 taxmann.com 189 (Bang)(Trib)

S. 271(1)(c) : Penalty-Concealment-Capital gains-Admitted the claim as bogus-Admitted in affidavit-The admitted claim was not shown as income in response to notice issued under section 148 of the Act-Levy of penalty is affirmed. [S. 10(38), 45, 132(4), 139,148] 2864
Held that the son of the assesseee has in his statement recorded u/s 132 (4) had admitted that the long term capital gain claimed as exempt was bogus claim. The assessee also filed an affidavit withdrawing the claim u/s 10(38) of the Act. However in response to notice u/s 148 while filing the return the assessee has not withdrawn the claim from the return. Penalty order under S 271(1)(c) of the Act is affirmed. (AY. 2014-15
Annapurna Boddu v. ACIT (2024) 229 TTJ 587 / 38 NYPTTJ 401 (Hyd)(Trib)

S. 271(1)(c) : Penalty-Concealment-Search-Additional income declared- No incriminating material is found-271(1)(c), Explanation 5 is not applicable-Penalty is deleted. [S. 132, 132A, 153A] 2865
Held that the additional income declared voluntarily has been accepted by the Revenue. No incriminating material was found during the course of search and the AO has accepted the returned income without any additions. Explanation 5A to S. 271(1)(c), penalty is to be levied if the assessee is found to be the owner of any money, bullion, jewellery or other valuable article or thing or there is some income based on the entry in the books of accounts/documents found during the course of search under S. 132 or requisition under s. 132A then only it shall be presumed that the assessee has concealed the particulars of income or furnished inaccurate particulars of income. On the facts there is allegation either by the AO or by the CIT(A). Levy of penalty is deleted. (AY. 2009-10, 2010-11)
Chander Mohan Arora v. DCIT (2024) 228 TTJ 126 / 234 DTR 290 / 38 NYPTTJ 104 (Amritsar)(Trib)

S. 271(1)(c) : Penalty-Concealment-Reassessment-Bogus purchases-Notice issued to parties returned as unserved by postal authorities-Addition on estimate basis-Deletion of penalty is affirmed. [S. 133(6), 147] 2866
Held, that the additions were made on estimation of total turnover after rejecting the books of account. Notices under section 133(6) issued to various purchase parties were all returned by the postal authority and the assessee had not produced the party in confirmation. Order of CIT(A) deleting the penalty is affirmed. (AY. 2010-11)
ITO v. Sunil Bhagwandas Vorani (HUF) (2024)114 ITR 146 (Mum)(Trib)

S. 271(1)(c) : Penalty-Concealment-Reassessment-No difference between returned income and assessed income-Penalty is not leviable. [S. 139(4), 148] 2867
Held that there was no difference between the assessee's assessed income and returned income, there is no concealment of income or providing of inaccurate particulars of income on final assessment. Levy of penalty is not justified. (AY. 2012-13 to 2016-17)
Ajoy Sharma v. Dy. CIT (2024)114 ITR 702/232 TTJ 81 (UO) (Trib)(Jaipur)

2868 **S. 271(1)(c) : Penalty-Concealment-Cash excess of prescribed limit-Loading and unloading-Ad-hoc disallowance-Levy of penalty is not justified. [S. 40A(3), 44AB,R. 6DD]**

Held that mere disallowance of expenses payment of cash expenses of excess of prescribed limit and ad-hoc disallowance of loading and unloading expenses, levy of penalty is not justified. (AY. 2009-10)

Ramchnd Bhulchand Rajai v. Dy. CIT(2024) 114 ITR 5 (SN)(Ahd)(Trib)

2869 **S. 271(1)(c) : Penalty-Concealment-Notice not specifying the charge-Estimation of gross profit-Penalty is deleted. [S, 274]**

Held that penalty cannot be levied without specifying the specific charge. Even on merit when gross profit is estimated, penalty cannot be levied. (AY. 2015-16)

Shiv Agrevo Ltd. v. Dy. CIT (2024)114 ITR 90 (SN)(Jaipur)(Trib)

2870 **S. 271(1)(c) : Penalty-Concealment-Deemed addition-Addition under section 56(2)(vii)(b)-Penalty is deleted. [S. 56(2)(vii)(b)]**

Assessee purchased a property for a consideration, which was less than FMV for the purpose of stamp duty valuation. Accordingly, AO added the difference to income of assessee under section 56(vii)(b). Thereafter, the AO levied penalty under section 271(1)(c). Assessee contended that addition was made by invoking "deeming provisions" under section 56(2)(vii)(b) and no penalty could be levied under section 271(1)(c) on "deemed addition". ITAT held that Addition was made by invoking "deeming provisions" under section 56(2)(vii)(b) and nothing was brought on record to demonstrate that assessee concealed particulars of income or deliberately furnished inaccurate particulars of income. Merely because the assessee agreed to addition on the basis of valuation made by stamp valuation authority, it could not be a conclusive proof that sale consideration as per sale agreement was deemed to be incorrect. Hence, penalty could not be levied on the basis of deeming provision. [ITA No. 45/Ahd/2022; dt. 13/12/2023] [A. Y. 2015-16]

Bankimbhai Natverbhai Patel v. ITO (Ahd.)(Trib.)(UR)

2871 **S. 271(1)(c) : Penalty-Concealment-Notice not specifying the charge of proceedings initiated-Penalty is bad in law. [S. 274]**

Held, that the notice did not make it clear if the assessee was called upon to explain for concealment of particulars of income or for furnishing inaccurate particulars of income. In the absence of striking off specific limb in the notice, the notice was invalid and the consequential penalty order was not sustainable in law. (AY. 2013-14)

India Flysafe Aviation Ltd. v. Dy. CIT (2024)113 ITR 431 (Delhi)(Trib)

2872 **S. 271(1)(c) : Penalty-Concealment-Depreciation on Biometric devices at 60 Per Cent. computer block-Assessing Officer allowing depreciation at 15 Per Cent-Penalty is deleted. [S. 2(11), 32]**

Held that when the assessee had disclosed and explained all the relevant facts and details pertaining to the claim of higher depreciation on biometric devices, merely claiming a higher depreciation, which was otherwise supported by various judicial precedents would not lead to a conclusion that the assessee had furnished inaccurate particulars of income. No penalty is imposable on the disallowance made by the

Assessing Officer towards the claim of depreciation made by the assessee. The penalty is deleted. (AY. 2012-13)
Mahaonline Ltd. v. CIT (Appeals) (2024)113 ITR 47 (SN)(Mum)(Trib)

S. 271(1)(c) : Penalty-Concealment-Not specifying the charge-Penalty order is quashed. 2873
Held that since penalty order passed by Assessing Officer under section 271(1)(c) did not mention specific charge of default committed by assessee i. e. whether assessee has concealed its particulars of income or furnished inaccurate particulars of such income, penalty order is contrary to law. Order of CIT(A) is affirmed. (AY. 2013-14)
DCIT v. Lakhani Arman Shoes (P.) Ltd. (2024) 209 ITD 497 (Delhi) (Trib.)

S. 271(1)(c) : Penalty-Concealment-Disallowance of claim-Capital gains-Investment in a residential house-Tribunal in quantum appeal partially allowed deduction under section 54F, Assessing Officer is directed to recompute quantum of penalty. [S. 54EC, 54F] 2874
Assessing Officer disallowed deduction claimed by assessee under sections 54EC and 54F and also imposed penalty under section 271(1)(c) upon her for furnishing inaccurate particulars of income. CIT(A) affirmed the order of the AO. On appeal the Tribunal held that since assessee herself admitted that claim for deduction under section 54EC is incorrect and by filing revised statement of income before Assessing Officer withdrew said claim, penalty imposed related to incorrect deduction under section 54EC deserved to be upheld. Since Co-ordinate Bench of Tribunal in quantum appeal partially allowed deduction under section 54F, Assessing Officer was to be directed to recompute quantum of penalty. (AY. 2013-14)
Maya K. Dharwani (Smt.) v. ITO (2024) 208 ITD 77 (Ahd) (Trib.)

S. 271(1)(c) : Penalty-Concealment-Not specifying the charge-Failure to strike off irrelevant portion of notice-Penalty is not sustainable. [S. 274] 2875
Allowing the appeal the Tribunal held that the Assessing Officer did not specify the limb for which the notice under section 271(1)(c) was issued, i. e., whether for concealment of income or for furnishing inaccurate particulars of income. The notice was issued mechanically stating that the assessee had concealed particulars of income or furnished inaccurate particulars of income. The penalty order passed under section 271(1)(c) of the Act by the Assessing Officer was bad in law and liable to be quashed. (AY. 2011-12, 2015-16)
District Co-Operative Bank Ltd. v. Asst. CIT (2024)110 ITR 32 (SN)(Delhi)(Trib)

S. 271(1)(c): Penalty-Concealment-Remuneration and interest on capital received from the firm as a partner-Assessing officer processed original return though the claim may be wrong-No issue as regards concealment of particulars of income, not a fit case for levy of penalty. [S. 44AD] 2876
Held that the assessee had filed information in the return of income concerning remuneration and interest on capital received from the firm as a partner. This fact was disclosed by the assessee in its original return of income and the original return of income was processed u/s. 143(1) but the assessee claimed these two items, i. e.

remuneration and interest on capital receipt from the firm on a presumptive basis u/s. 44AD and declared a net profit of eight percent. The assessee could not make such a claim and this was not allowable. But all the facts relating to these two claims were available before the AO and even the AO processed the original return and accepted the claim, which may be wrong. The assessee had disclosed the complete particulars of income relating to remuneration received from the firm and interest on capital invested with the firm. Once a fact, it meant that there was no issue as regards concealment of particulars of income. Hence not a fit case for a levy of penalty u/s. 271(1)(c). (AY. 2016-17)

Anandkumar Salooja v. Dy. CIT (2024) 111 ITR 95 (SN)(Chennai)(Trib.)

2877 **S. 271(1)(c): Penalty-Concealment-Quantum against-Quantum decided against alone was not sufficient for initiation of penalty proceedings for furnishing inaccurate particulars of income. [S. 80GGC]**

Held that claim u/s. 80GGC was made based on the opinion of the auditor which was accepted by the commissioner (appeals). The claim is not tantamount to furnishing inaccurate particulars of income. It could not be held that the claim at the time of filing of return of income based on the opinion of an auditor was not bona fide. That claim was not tantamount to furnishing inaccurate particulars of income. Penalty deleted. (AY. 2011-12)

Anjali Neeraj Hardikar v. NFAC(2024) 111 ITR 15 (SN) (Mum)(Trib.)

2878 **S. 271 (1) (c): Penalty-Concealment-Even if the reassessment order was quashed for any reason, the original assessment order would continue to exist-Additional income assessed in reassessment would warrant separate penalty proceedings-Independent of penalty qua income assessed in the original assessment-Matter remanded to CIT(A) for adjudication on merits. [S. 143(3), 147, 148, 250]**

Held that the original assessment and reassessment were two independent proceedings as were the penalty proceedings respectively initiated therein. Even if the reassessment order was quashed for any reason, the original assessment order would continue to exist. The AO imposed a penalty qua the income assessed in the original assessment for which a separate penalty notice was issued. The originally assessed income was further enhanced in the reassessment and therefore the additional income assessed in the reassessment would have separate penalty proceedings u/s. 271 (1)(c), independent of the penalty qua the income assessed in the original assessment. That was the precise reason that the AO had initiated separate penalty proceedings in the order of reassessment. Matter remanded to CIT(A) on merits. (AY. 2012-13)

Balaji Farms and Reality v. Asst. CIT (2024) 111 ITR 30 (SN) (Indore)(Trib.)

2879 **S. 271(1)(c) : Penalty-Concealment-Bogus purchases-Estimated addition-Levy of penalty is not valid. [S. 69A]**

Assessee had shown purchases from various parties. Assessment order passed under section 143(3) of the Act, AO, in absence of sufficient material to prove genuineness of purchases, made addition of 12. 5% of total purchases. Thereafter, he levied penalty under section 271(1)(c).

CIT(A), by following the decision of Co-ordinate Bench of Tribunal in the case of *Mukesh Shaligram Sharda v. ITO*, deleted the penalty holding that no penalty under section 271(1)(c) was leviable on estimated additions. Since finding of CIT(A) were based on decision of Co-ordinate Bench of Tribunal, there was no infirmity in the same. [ITA No. 2548/Mum/2023 dt. 20/03/2024] (AY. 2011-12)
ITO v. Saraswati Wire And Cable Industries (Mum)(Trib)(UR)

S. 271(1)(c) : Penalty-Concealment-Not specifying the charge in the notice-Levy of penalty is not justified-Estimated addition of 100 Per Cent. of purchases reduced to 30 Per Cent. of purchases by Commissioner (Appeals)-Estimated addition involving inherent subjectivity-Penalty is not warranted. [S. 274] 2880
Held that the notice was in the nature of an omnibus show-cause notice issued without deleting or striking out the inapplicable part. The penalty order passed under section 271(1)(c) of the Act also did not spell out which limb of section 271(1)(c) of the Act was attracted for levy of penalty. Since show-cause notice itself did not spell out clearly as to what fault the assessee was being proceeded against for levy of penalty, the notice itself was bad in law, and consequently the penalty levied was vitiated. That moreover, in the quantum assessment the estimated addition of 100 per cent. of purchases was made by the Assessing Officer, which was reduced to 30 per cent. of the purchases by the Commissioner (Appeals). In such a scenario, penalty under section 271(1)(c) of the Act was not warranted because estimated addition involved inherent subjectivity. (AY. 2010-11)
S. Sagar Enterprise v. Dy. CIT (2024)110 ITR 68 (SN)(Mum)(Trib)

S. 271(1)(c) : Penalty-Concealment-Self assessment tax paid prior to issue of reopening of notice-Penalty is deleted. [S. 139, 140A, 148] 2881
Assessee sold immovable property along with nine other co-owners and failed to file a valid return under section 139. Assessing Officer issued reopening notice and initiated penalty proceedings against assessee. Assessing Officer levied a penalty under section 271(1)(c) equivalent to 100 per cent of tax sought to be evaded. On appeal the Tribunal held that the assessee has paid the self assessment tax which was also reflected in Form No. 26AS. Tribunal held that since the assessee paid self-assessment tax prior to issue of reopening notice, as per Explanation 4 to section 271(1)(c), amount of tax sought to be evaded was to be determined by taking into consideration amount of tax on total income assessed as reduced by amount of advance tax, tax deducted at source, tax collected at source and self-assessment tax paid. Since Assessing Officer had determined total tax on income assessed at Rs. 2.08 lakhs whereas self-assessment tax paid by assessee was Rs. 2. 16 lakhs, amount of tax sought to be evaded was nil, penalty is deleted. (AY. 2011-12)
Kavita Sachdev (Smt.) v. ITO (2024) 207 ITD 204 /115 ITR 265 (Indore) (Trib.)

S. 271(1)(c) : Penalty-Concealment-Revision order is quashed by the Tribunal-Consequential penalty order had no leg to stand. [S. 115JB, 143(3), 263] 2882
Affirming the order of the CIT(A) the Tribunal held that where order of Principal Commissioner passed under section 263 was quashed by Tribunal, and accordingly, further assessment order passed under section 143(3) read with section 263 giving effect

to said order was also quashed, consequential levy of penalty under section 271(1)(c) which was based on said order passed under section 143(3) read with section 263 had no leg to stand. (AY. 2014-15)
ACIT v. Jaipur Telecom (P.) Ltd. (2024) 207 ITD 780/230 TTJ 57 (UO) (Jaipur) (Trib.)

2883 **S. 271(1)(c) : Penalty-Concealment-Bogus purchases-Estimated addition-Levy of penalty is not valid. [S. 69A]**
Assessee had shown purchases from various parties. Assessment order passed under section 143(3) of the Act, AO, in absence of sufficient material to prove genuineness of purchases, made addition of 12. 5% of total purchases. Thereafter, he levied penalty under section 271(1)(c). CIT(A), by following the decision of Co-ordinate Bench of Tribunal in the case of *Mukesh Shaligram Sharda v. ITO*, deleted the penalty holding that no penalty under section 271(1)(c) was leviable on estimated additions. Since finding of CIT(A) were based on decision of Co-ordinate Bench of Tribunal, there was no infirmity in the same. [ITA No. 2548/Mum/2023 dt. 20/03/2024] (AY. 2011-12)
ITO v. Saraswati Wire And Cable Industries (Mum)(Trib)(UR)

2884 **S. 271(1)(c) : Penalty-Concealment-Disallowance of claim –Depreciation-Mere disallowance of claim penalty cannot be levied-Penalty also quashed on the ground of limitation. [S. 22, 24, 32, 275]**
Held that merely because assessee preferred a claim which was not acceptable to revenue, assessee could not be visited with penalty proceedings under section 271(1)(c), unless and until twin requirements under section 271(1)(c) were satisfied. Penalty also quashed on the ground of limitation. (AY. 2016-17)
Kamal Enterprises and New Life Hospital v. DCIT (2024) 206 ITD 90 (Hyd) (Trib.)

2885 **S. 271(1)(c) : Penalty-Concealment-Returned income and assessed income are same-Penalty for concealment of income cannot be levied. [S. 139]**
AO in assessment proceeding had accepted return of income filed by assessee and determined total income without any variation between returned and assessed income. AO had levied penalty under section 271(1)(c) for reason that assessee had concealed particulars of income during year under consideration. CIT(A) up held the penalty. On appeal the Tribunal held that since there had been no variation in returned and assessed income, there could not be any possibilities of assessee concealing particulars of income which could attract provision of section 271(1)(c). Accordingly the penalty is deleted. Followed, *Armoury International Pereira Compound v. ACIT (ITA No. 3299 to 3301 (Mum) of 2017 dt. 1-1-2019)* (AY. 2016-17)
Haresh Ghanshyamdas Makhija v. ITO (2024) 206 ITD 149 (Mum) (Trib.)

2886 **S. 271(1)(c) : Penalty-Concealment-Not striking off irrelevant portion in the notice-Penalty order is quashed. [S. 69C, 143(3)]**
On quantum the Commissioner (Appeals) restricted the addition to 3%of alleged bogus purchases. The AO has levied the penalty u/s i 271 (1)(c) of the Act which was confirmed by the CIT(A). The Tribunal deleted the levy of penalty on the ground that the Assessing Officer has not deleted irrelevant portion in the penalty notice. (AY. 2011-12)
S. Sagar Enterprises v. DCIT [2024]205 ITD 110/109 ITR 650 (Mum) (Trib)

S. 271(1)(c) : Penalty-Concealment-Deeming provision –Capital gains-Agreement value-Stamp valuation-Levy of penalty is not valid. [S. 50C] 2887

The assessee, an individual resident, sold an immovable property jointly owned by him and one Mr. X as per an agreement. The market value of the property as per Stamp Duty Authority was significantly higher and the value determined by the Valuation Officer was a figure intermediate to the selling price and the stamp duty value. The assessment of the assessee was reopened based on the information received from the assessment proceedings of Mr. X. The learned Assessing Officer made an addition under Section 50C of the Income-tax Act, 1961 (the Act), and levied a penalty under Section 271(1)(c) of the Act. The contention of the Assessee was that addition is made based on DVO report u/s 50 C of the Act. It is a deeming provision; there is no dispute about actual consideration. And that on deeming provision addition, penalty could not be levied. The assessee appealed against the penalty order before the learned CIT(A), who confirmed the penalty by an ex-parte order. The assessee further appealed before the Tribunal, challenging the ex-parte order and the levy of penalty.

The Tribunal concurred with the Assessee in holding that the penalty under Section 271(1)(c) of the Act is not applicable in a case of addition under Section 50C of the Act, which is a deemed provision. And that on deeming provision addition, penalty could not be levied. (AY. 2014-15)

Gunwant Sohanlal Kherodiya v. Dy. CIT [2024] 109 ITR 31(SN) (Mum)(Trib)

S. 271(1)(c) : Penalty-Concealment-Mere disallowance of expenditure no penalty can be levied. [S. 274] 2888

The Hon'ble Tribunal held that the penalty proceedings are separate from assessment proceedings and require independent evidence of intentional concealment or furnishing inaccurate particulars. The Hon'ble Tribunal deleted penalties related to additions and disallowances that were overturned in quantum proceedings. And emphasized that penalties cannot be imposed based on estimated additions or mere disallowances without concrete evidence of concealment or inaccurate particulars. (AY. 2010-11, 2011-12)

Raj Auto Wheels Pvt. Ltd. v. DCIT, (2024) 111 ITR 336 (Jaipur)(Trib.)

S. 271A : Penalty-Failure to keep-maintain-Retain books of accounts –Documents-Audit of accounts-Once penalty is levied for non-maintenance of books of account, no penalty under section 271B can be levied. [S. 44AB, 271B] 2889

AO levied penalty under section 271A for non-maintenance of books of account by assessee. The AO also levied penalty under section 271B due to non-audit of books of account under section 44AB by assessee. CIT(A) affirmed the order of the AO. On appeal the Tribunal held that when the Assessing Officer had levied a penalty under section 271A, which assessee had accepted and paid, consequently, penalty under section 271B could not be imposed for non-auditing of books of account where assessee had failed to maintain same. Accordingly the Assessing Officer is directed to directed to delete penalty. AY. 2016-17)

Haresh Ghanshyamdas Makhija v. ITO (2024) 206 ITD 149 (Mum) (Trib.)

2890 **S. 271A : Penalty-Failure to keep-maintain-Retain books of accounts –Documents-Penalty order is set aside. [S. 44AA]**

The Assessee challenged the penalty imposed by the AO u/s 271A for non-maintenance of books of accounts as required by section 44AA. The AO initiated the penalty based on the Assessee's share transactions exceeding 10 lakhs. ITAT observed that the AO failed to produce any evidence which showed the Assessee's engagement in a business requiring the maintenance of books under section 44AA. The assessment order lacked conclusive evidence on the nature of the Assessee's share transactions as a business activity. The ITAT criticized the AO for prematurely concluding a violation of section 44AA without establishing the essential conditions. (AY. 2011-12)

Amey Pravinbhai Brahmbhatt v. ITO [2024] 109 ITR 17 (SN)(Ahd)(Trib)

2891 **S. 271AA : Penalty-Failure to keep and maintain books of accounts –Documents-International transaction-Transfer pricing-Non-Reporting of specified domestic transactions in Form 3CEB-Initiation of penalty and imposition of penalty falling under different grounds-Reasonable cause-Penalty is not sustainable. [S. 92CA(3), 92D, 92E, 273B]**

Held that the penalty had been initiated for non-reporting of the specified domestic transactions in form 3CEB entered into by the assessee whereas penalty had been levied for failure to maintain accounts as required under section 92E. The requirement to maintain information and documents were specified in section 92D and not section 92E and even if wrong-mention of the section was ignored, the bases for initiation and final levy of penalty were distinct. The assessee had explained that it had acted on the professional advice of its auditors to report only those transactions that exceeded the threshold and, consequently, the transactions undertaken with Y were duly reported in form 3CEB while the other transactions were not, since they did not exceed the prescribed threshold. Neither the Transfer Pricing Officer, nor the Assessing Officer, had commented adversely on the assessee's explanation before levying penalty. Therefore, as the assessee had a reasonable basis for non-reporting of transactions in terms of section 273B. Levy of penalty is deleted. (AY. 2014-15)

Yamuna Power and Infrastructure Ltd. v. Dy. CIT (2024)114 ITR 86 (SN)/ 231 TTJ 1059 / 243 DTR 33 (Chd)(Trib)

2892 **S. 271AAA : Penalty-Search initiated on or after 1st June, 2007 –Undisclosed income-Surrender of additional income during search-No specific discrepancy-Penalty is deleted. [S. 132, 132(4)]**

Held that the undisclosed income surrendered and admitted during the course of search has to fall within the four corners of the definition of the undisclosed income and only in a situation where it satisfies the said definition, the levy of penalty is justified and not otherwise. It is for the AO to record a specific finding that undisclosed income as so defined has been found based on tangible verifiable material found during the course of search and the onus is thus on the AO to satisfy the conditions before the charge for levy of penalty is fastened on the assessee. Penalty is deleted. (AY. 2011-12)

Ajay Kumar Sood Engineers & Contractors v. Dy. CIT (2024) 232 TTJ 90 /242 DTR 216 (Chd)(Trib)

S. 271AAA : Penalty-Search initiated on or after 1st June, 2007 –Manner of deriving surrendered income-Failure to satisfy conditions-Order of Tribunal confirming levy of penalty is not erroneous. [S. 132(4), 260A] 2893

During a search and seizure operation conducted at the business and residential premises of the assessee under section 132(1), the assessee surrendered additional income in the statement under section 132(4) and declared in the return filed for the assessment year 2010-11. The surrendered income included the amount on account of excess stock and an amount as income from other sources. The assessee could not explain certain seized documents but stated that those could be included to form part of the amounts surrendered during the search and seizure operation and paid the tax with interest on the surrendered income. The Assessing Officer levied penalty under section 271AAA. The Commissioner (Appeals) deleted the penalty on the ground that if no specific question was put under section 132(4), it could not be concluded that the assessee had failed to reply or specifically substantiate the manner of concealment. On appeal by the Department, the Tribunal held that the assessee had failed to satisfy the conditions laid down in section 271AAA(2) to get the general amnesty under section 271AAA(2) since the assessee had neither specified nor substantiate the manner in which the undisclosed income was derived and accordingly confirmed the penalty. On appeal dismissing the appeal, that the assessee had failed to discharge the obligation under section 271AAA(2) of specification of the manner in which the undisclosed income had been derived and thereafter substantiate such disclosures. The imposition of penalty is dependent not merely on the disclosure of income having been made in the course of statement recorded under section 132(4). The order of the Tribunal confirming levy of penalty under section 271AAA is not erroneous. (AY. 2010-11)

SSA International Ltd. v. Asst. CIT (2024)467 ITR 183 (Delhi)(HC)

S. 271AAA : Penalty-Search initiated on or after 1st June, 2007 –Undisclosed Income-Surrender of income-Specific charge-Burden of proof to establish there was undisclosed income is on Assessing Officer-Penalty is deleted. [S. 132, 132(4)] 2894

Held that the appeal, that the Commissioner (Appeals) had returned a finding that the surrender made by the assessee as apparent from the statement of the partner S recorded under section 132(4) of the Act was made to cover any discrepancy in the documents and books seized during the course of search, work-in-progress and stock. The Commissioner (Appeals) further held that in the absence of any discrepancy pointed out, the assessee's admission of undisclosed income did not fall in the definition of "undisclosed income" which was the very basis for giving immunity from penalty under section 271AAA of the Act, as all the sub-clauses of section 271AAA of the Act are related to "undisclosed income". The Commissioner (Appeals) had therefore rightly held that no specific discrepancy had been pointed out and merely because surrender had been made by the assessee to cover any potential discrepancy, would not mean that it fell in the definition of undisclosed income as so defined. In spite thereof, the Commissioner (Appeals) had confirmed the penalty holding that it was for the assessee to demonstrate that income surrendered fell in the definition of undisclosed income as so defined. It was for the Assessing Officer to record a specific finding that undisclosed income as defined had been found based on tangible verifiable material found during the course of search and the onus was on the Assessing Officer (and not on the

assessee) to satisfy the conditions before the charge for levy of penalty was fastened on the assessee. The Assessing Officer had to record a specific finding as to the fulfilment of conditions specified therein which apparently had not been fulfilled in the instant case. Penalty is deleted. (AY. 2011-12)
Ajay Kumar Sood Engineers and Contractors v. Dy. CIT (2024)113 ITR 34 (SN)(Chd)(Trib)

2895 **S. 271AAB : Penalty-Search initiated on or after 1st day of July 2012-Not mandatory-Not specifying the specific charge-Penalty order is quashed. [S. 132]**
Held that the AO has discretion to levy of penalty, it is not mandatory. The Tribunal also held that levy of penalty is invalid as the AO has neither specified the grounds and default on the part of the assessee nor the notice specify the undisclosed on which the penalty is proposed to be levied. Order of CIT(A) deleting the penalty is affirmed. (AY. 2020-21) (ITA No. 371/ Jaipur/2023 dt. 8-11-2023)
JCIT v. Vijay Kumar Saini (2024) BCAJ-January-P. 33 (Jaipur)(Trib)

2896 **S. 271AAB : Penalty-Search initiated on or after 1st day of July 2012-Cash payment-Recorded in balance sheet-Cannot be held to be undisclosed –Additional ground-Legal issue-Matter remanded to the CIT(A). [S. 270A,274, ITAT R. 27]**
The Tribunal held that the assessee had challenged the issue of legality of notice issued under section 274 read with section 270A / 271AAB for both assessment years for the first time before the Tribunal, and the facts with regard to the legal issue were not on record. Application under Rule 27 of the ITAT Rules 1963 is admitted on legal issue in the appeal of the Revenue Since, the Commissioner (Appeals) had not discussed the issue or decided the issue raised by the assessee, the issue is remanded to Commissioner (Appeals) for considering the preliminary legal issue raised by the assessee on the validity of penalty proceedings initiated on the basis of vague notice issued under section 274 read with sections 270A and 271AAB of the Act. Followed, *CIT v. India Cements Ltd (2020) 424 ITR 410 (Mad)(HC), Peter Vaz v. CIT (2021) 436 ITR 616 (Bom) (HC)* (AY. 2017-18, 2018-19)
ACIT v. Incredible India Projects P. Ltd. (2024)116 ITR 57 (SN)(Hyd) (Trib)

2897 **S. 271AAB : Penalty-Search initiated on or after 1st day of July 2012-Undisclosed income-Mere surrender of income is not sufficient to levy the penalty-Penalty is deleted. [S. 132, 132(4),153A]**
Held that the Assessing Officer had made an office note in the assessment order to the effect that the seized material had also been examined so far as considered relevant but nothing incriminating was found in relation to this case, that the bank account of the assessee was examined and no adverse view is required. Therefore when the Assessing Officer had himself acknowledged that there was nothing incriminating in seized material. When that was so, there was nothing of the nature of undisclosed income prescribed in clause (c) of the Explanation to section 271AAB. Penalty is deleted. (AY. 2017-18, 2018-19)
Mukesh Kumar Ranka v. ACIT (2024)115 ITR 133 (Indore)(Trib)
Anju Jain v. ACIT (2024)115 ITR 133 (Indore)(Trib)

S. 271AAB : Penalty-Search initiated on or after Ist day of July 2012-Surrender of income in the course of search-Failure to disclose in the return-Penalty is justified in respect of difference added as undisclosed income-Limb under which penalty is to be levied spelt out and assessee not offered explanation-Limitation-Tribunal passing order in quantum appeal on 27-9-2019 and penalty order passed on 23-3-2020-Order is within prescribed time-limit-No violation of principle of natural justice. [S. 271AAB(1)(c), 274(1), 275(1)] 2898

Held that in view of the finding by the Tribunal that no reply was given by the assessee to explain the differential amount, it could not be said that the additions were merely estimated additions. The additional income was surrendered by the assessee, a part of which was admitted in the return of income whereas a part thereof was not. The Assessing Officer added the differential to the income of the assessee and finally, the additions to the extent for which reply could not be furnished by the assessee, were confirmed. Therefore, this was not merely an estimated addition. That the penalty order was based on the findings rendered by the Tribunal in quantum appeal. The differential so added to the income of the assessee would be undisclosed income within the meaning of section 271AAB. The assessee's case would squarely fall within clause (c) of section 271AAB(1) since the admission made by the assessee was not honoured in the return of income and clauses (a) and (b) would have no application in such a case. That adequate opportunity of hearing was given to the assessee to assail the penalty as required by the provisions of section 274(1) of the Act. Whether it was through statutory notice or a non-statutory notice would be immaterial. The only requirement was that opportunity of hearing should be given specifically mentioning the ground which the assessee has to meet. That had been done in the present case. That the limb under which penalty was to be levied was clearly spelt out and the assessee could not offer any explanation against the addition. That the Tribunal having passed order in quantum appeal on September 27, 2019, the penalty order passed on March 23, 2020 was well within the prescribed time limits under section 275(1). That the facts on record did not show any such violation of principles of natural justice as pleaded by the assessee. Adequate opportunity of hearing had already been afforded to the assessee. (AY. 2015-16)
Summit Online Trade Solutions P. Ltd. v. Dy. CIT (2024)110 ITR 8 (SN)/228 TTJ 253/ 235 DTR 1 (Chennai)(Trib)

S. 271AAC : Penalty in respect of certain income-Unexplained cash deposit-Addition deleted-Levy of penalty is deleted. [S. 69A] 2899

Addition was deleted, hence the penalty will not survive. (AY. 2017-18)
Rotluanga Stephen v. ITO (2024) 115 ITR 15 (SN) / [2025] 170 taxmann.com 241 (Gauhati)(Trib)

S. 271B : Penalty-Failure to get accounts audited-Failure to submit audit report in time-Reasonable cause-Levy of penalty is not valid. [S. 44AB, 273B] 2900

Held that the Assessing Officer concluded that the filing of the tax audit report belatedly showed the mala fide intention of the assessee to evade tax on his income. In view of the fact that the gross income disclosed by the assessee was accepted subsequently by the Assessing Officer and the total tax liability shown in such return was also accepted, the conclusion that the assessee filed the tax audit report belatedly with the mala fide

intention to evade tax could not be sustained. The Assessing Officer concluded the plea that the return of income and audit report could not be filed in time due to severe lower back pain of the assessee appeared to be a fabrication to mislead the penalty proceedings. In support of the submission that the assessee suffered lower back pain, the order disclosed that photocopies of the doctor's prescriptions were provided. Once again, in view thereof and in view of the factual position with regard to the return of income, this conclusion could not be sustained. The imposition of penalty under section 271B was not valid.
Natarajan Anandh Kumar v. AUITD (2024)466 ITR 201/ 338 CTR 492 (Mad)(HC)

2901 **S. 271B : Penalty-Failure to get accounts audited-Legal representatives-Death of assessee-Penalty is not leviable on legal representative-Penalty is deleted. [S. 44AB, 159(1), 159(4), 274(1)]**
The AO levied the penalty for failure to furnish audit report on legal representative. CIT(A) affirmed the order of the AO. On appeal the Tribunal held that words any sum referred in sub-S. (1) of S. 159 have been substituted in place of words any tax which occurred under section i 24B of the IT Act, 1922 so as to cover not only tax payable but also any penalty or interest. Therefore, legal representatives of the deceased are also liable to pay penalty on behalf of the deceased assessee pursuant to the provisions of S. 159(1). However, sub-S. (4) of S. 159 only empowers recovery of the tax liability to the extent of estate of deceased assessee succeeded by Legal Representative. Penalty is different and distinct in nature than tax, penalty proceedings abate on the death of the assessee. If recovery of penalty is permitted against the estate of deceased, then it would clearly lead to permitting the enforcement of crime against the right of Legal heir in the succeeded estate. Accordingly penalty under S. 271B is not sustainable and cannot be recovered from the Legal heir upon the death of the assessee. Penalty is deleted, Referred *Bhuban Mohan Mitter Charitable Trust v. ITO (1993) 45 ITD 617 (Cal) (Trib) Bhagwansingh Shriramsingh L/H Dinesh Bhagwan Singh v. ITO (2006) 9 SOT 73 (Mum) (Trib) Taraknath Gayen & Ors. v. CEGAT (1987) 31 ELT 631 (Cal)(HC),Omwati v. UOI (2000) 125 ELT 136 (All)(HC).* (AY. 2017-18)
Beantkaur Avtarsingh Juneja v. ITO (2024) 229 TTJ 916 / 238 DTR 225 (Nag)(Trib)

2902 **S. 271B : Penalty-Failure to get accounts audited-Affidavit-Obtained tax audit report on 28th Sept., 2011-Inadvertently filled the column regarding details of audit under S. 44AB wrongly as No-Bonafide mistake-Penalty is deleted. [S. 44AB]**
Held that the assessee obtained the tax audit report within the prescribed time and filed the same before the authorities below and the auditor having confirmed the said fact by way of an affidavit, penalty under s. 271B is not leviable merely because the assessee wrongly stated "No" in the column regarding details of audit under S. 44AB at the time of filing his e-return. Penalty is deleted. (AY. 2011-12)
Paras Mal Sethia Through Lr Smt. Kamla Devi Sethia v. ITO (2024) 159 taxmann.com 1239 /228 TTJ 17(UO) (Jodhpur)(Trib)

S. 271B : Penalty-Failure to get accounts audited-Death of assessee-Legal representative-Legal representative of deceased offender or criminal could not be penalised for offences or crimes committed by deceased. [S. 44AB, 139(1), 159(4)] 2903

Held that the appeal, that the penalty amount is not recoverable from the legal representative of accused as imposition of penalty is intended to penalise the accused ; therefore, recovery of penalty from the legal representative would amount to punishing the legal representative. Penalty order is set aside. The Tribunal also held that sub-section (4) of section 159 of the Income-tax Act, 1961 only empowered the recovery of the tax liability to the extent of estate of the deceased assessee succeeded by the legal representative. The conjoint reading of sub-section (1) and sub-section (4) of section 159 suggested that, in case of death of the assessee, the tax subject to estate of the deceased assessee could only be recovered (if any) from the legal representative. Conversely, nothing other than tax can be fastened to the estate succeeded by the legal representative. (AY. 2017-18)

Beantkaur Avtarsingh Juneja v. ITO (2024)115 ITR 18 (Nag)(Trib)

S. 271B : Penalty-Failure to get accounts audited-Running a milk booth for distribution of products of Mother Dairy and Vegetables Pvt Ltd-Commission income-Bona fide belief-Penalty is not leviable. [S. 44AB, 273B] 2904

Held that the assessee, a distributor of the Mother Dairy and Vegetables Pvt Ltd and a retired army personnel, was under the bona fide belief that no books of account were required to be maintained since the only source of earning income was commission as fixed by the Mother Dairy and Vegetables Pvt Ltd on the sale of milk and other products, and there was no need of any audit of accounts. Therefore, the penalty was not leviable. Penalty is deleted. (AY. 2017-18)

Tasavver Husain v. ITO (2024)113 ITR 236 (Agra)(Trib)

S. 271B : Penalty-Failure to get accounts audited-Obtained tax audit report before due date-Wrongly mention as no in the column-Penalty is deleted. [S. 44AA, 44AB] 2905

Held that the assessee had obtained the tax audit report as required under section 44AB of the Act and e-filed its e-return of income before the due date. Only because the assessee at the time of filing of its e-return had inadvertently filled the column regarding details of audit under section 44AB wrongly as "No", penalty under section 271B would not be leviable. (AY. 2011-12)

Paras Mal Sethia v. ITO (2024)110 ITR 16 (SN) (Jodhpur)(Trib)

S. 271B : Penalty-Failure to get accounts audited-Not maintaining the books of account-Not liable for penalty for failure to get accounts audited. [S. 44AA, 44AB, 139(1), 148, 271A] 2906

Held that the assessee did not file any return of income under the provisions of section 139(1) of the Act. The return was filed in response to the notice issued under section 148 of the Act on account of income escaping assessment. Thus, there remained no ambiguity that the books of account of the assessee were not written up before the due date for filing the return of income as specified under section 139(1) of the Act. Once, it was established that the books of account were not written up in time, the question of

getting them audited to comply with the provisions of section 44AB of the Act, would not arise. The first default of the assessee was non-maintenance of books of account under section 44AA of the Act which was a complete offence and was subject to the penalty under the provisions of section 271A of the Act. Therefore, the assessee could not be visited with the penalty for the offence of not getting accounts audited. (AY. 2011-12, 2012-13)
Pradipbhai Dayabhai Aghara v. ITO (2024)110 ITR 14 (Trib) (SN)(Rajkot)(Trib)

2907 **S. 271B : Penalty-Failure to get accounts audited-Share broker-Tax audit-Penalty-Commission income constitute turnover and not sale price of commodities –Penalty is deleted. [S. 44B]**
Assessee, a share broker, had earned commission income from sub-broker activity of shares and had also earned capital gains from purchase and sale of shares. Assessing Officer held that turnover of assessee from sale of shares was Rs. 6.06 crores. Accordingly, he levied penalty under section 271B for failure to get accounts audited in terms of provisions of section 44B. CIT(A) confirmed the penalty. On appeal the assessee contended that he being in business of sub-brokerage, only commission could be considered as income and not total receipts and sale consideration of shares sold by assessee on which it earned commission/brokerage was not turnover, and could not be constitute its turnover. Tribunal held that it was only commission income earned by assessee which could be treated as its turnover and same falling well below limit prescribed by section 44AB for subjecting books of account to audit, there was no case for assessee to have got its books audited in terms of provisions of said section. Penalty levied under section 271B is deleted. (AY. 2016-17)
Parag Hashmukhbhai Davda v. ITO (2024) 206 ITD 456 (Rajkot) (Trib.)

2908 **S. 271B : Penalty-Failure to get accounts audited-Failure to keep maintain-Retain books of accounts –Documents-Not maintained books of account-Penalty cannot be levied. [S. 44AA, 271A]**
Business of real estate. Not maintained books of account. The AO has estimated the income at 4 per cent of gross profit. The AO levied the penalty u/s 271B of the Act. CIT(A) affirmed the penalty. On appeal the Tribunal held that the assessee did not maintain books of account, no question for producing books of account before tax authority would arise and as assessee had violated section 44AA, penalty could be levied under section 271A and not under section 271B for not getting books of account audited. Penalty imposed by Assessing Officer under section 271B is deleted. (AY. 2013-14, 2014-15)
Balasingam Somasundaram v. ACIT (2024) 206 ITD 643/231 TTJ 350 (Chennai) (Trib.)

2909 **S. 271C : Penalty-Failure to deduct tax at source-AO issued penalty 11 years after assessment order passed-Held, imposing penalty barred by limitation. [S. 275 (1)(c)]**
Suo moto disallowance sought by the assesee with regard to the provisions of section 40(a)(ia) of the Act. The AO passed assessment order. The JC submitted a proposal for levying penalty for failure to deduct tax at source. The AO issued a notice almost 11 years after the assessment order and 14 years after the return was filed. On appeal, the Hon'ble Delhi High Court observed that the word used in the provision of section 275(1)(c) is 'initiated', which is an act which would get triggered on the date when the

proposal is made. This rationale ties in with the view taken by the coordinate Bench of the High Court in the case of *Clix Capital Services (P.) Ltd. [2023] 149 taxmann.com 279 (Delhi) (HC).* Hence, it was held that the action of the revenue is barred by limitation. (AY. 2005-06)
PCIT (TDS)-1 v. Hindustan Coca Cola Beverages (P.) Ltd. [2023] 157 taxmann.com 587 (2024) 296 Taxman 455 (Delhi)(HC)

S. 271D : Penalty-Takes or accepts any loan or deposit-Cash credits-Reasonable cause-High Court affirmed the order of the Tribunal. Revenue filed SLP which was delayed by 660 days-SLP of revenue is dismissed on account of delay as well as on merits. [S. 68, 271E, 273B, Art. 136] 2910

Assessee, a Co-operative Credit Society, offered banking-like services to members, mainly farmers and those with limited access to formal banking. Assessing Officer held that society had accepted and repaid cash loans or deposits in amounts exceeding permissible limit, violating sections 269SS acceptance and 269T repayment. He levied penalties under sections 271D and 271E of the Act. CIT (Appeals) deleted the penalties, which is affirmed by Tribunal. On the ground that Co-operative Society acted on a bona fide belief that transactions were genuine and routine business activities, which did not warrant penalties under sections 271D and 271E. High Court affirmed the order of the Tribunal. Revenue filed SLP which was delayed by 660 days. SLP of revenue is dismissed on account of delay as well as on merits. (AY. 2010-11)
PCIT v. Shree Madhi Surali Vibhag Nagarik Sahakari Dhiran Mandali Ltd. (2024) 301 Taxman 556 (SC)
Editorial : PCIT v. Shree Madhi Surali Vibhag Nagarik Sahakari Dhiran Mandali Ltd. (2024) 167 taxmann.com 470 (Guj)(HC)

S. 271D : Penalty-Accepts any loan or deposit –Not received any cash loan-Un explained money-Penalty levied without recording the satisfaction-Not recorded any finding that there had been any violation of provisions of section 269SS-Penalty order is set aside. [S. 69A,153C, 269SS, Art. 226] 2911

Assessee received loan of Rs. 6.65 crores and repaid a sum of Rs. 7.70 crores. Assessing Officer held that assessee had accepted loans in cash. He further held that assessee paid an amount of Rs. 1.05 crores in excess. Assessing Officer taking note of letter of assessee, acknowledging receipt of amount of Rs. 6.65 crores made addition under section 69A on account of such excess amount which according to Assessing Officer was excess payment over and above loans accepted as unexplained money. Commissioner had initiated penalty proceedings under section 271D and levied penalty of certain amount. Assessing Officer, except to base his addition on letter of assessee, did not record any finding that there had been any violation of provisions of section 269SS by assessee, nor was any satisfaction recorded to effect that alleged transaction of acceptance of loan would attract penal consequences. On writ the Court held that since the Assessing Officer did not record any satisfaction in assessment order to effect that provisions of section 269SS were violated and did not contemplate levy of penalty under section 271D. Penalty levied is set aside.
Grandhi Sri Venkata Amarendra v. Jt. CIT (2024) 301 Taxman 516 /341 CTR 947 / 244 DTR 139 (AP)(HC)

2912 **S. 271D : Penalty-Takes or accepts any loan or deposit-Cash credits-Reasonable cause-High Court affirmed the order of the Tribunal. [S. 68, 260A, 271E, 273B]**

Assessee, a Co-operative Credit Society, offered banking-like services to members, mainly farmers and those with limited access to formal banking. Assessing Officer held that society had accepted and repaid cash loans or deposits in amounts exceeding permissible limit, violating sections 269SS acceptance and 269T repayment. He levied penalties under sections 271D and 271E of the Act. CIT (Appeals) deleted the penalties, which is affirmed by Tribunal, on the ground that Co-operative Society acted on a bona fide belief that transactions were genuine and routine business activities, which did not warrant penalties under sections 271D and 271E. High Court affirmed the order of the Tribunal. (AY. 2010-11)

PCIT v. Shree Madhi Surali Vibhag Nagarik Sahakari Dhiran Mandali Ltd. (2024) 167 taxmann.com 470 (Guj)(HC)

Editorial : PCIT v. Shree Madhi Surali Vibhag Nagarik Sahakari Dhiran Mandali Ltd. (2024) 301 Taxman 556 (SC), SLP of revenue is dismissed on account of failure to explain the delay of 660 days as well as on merits.

2913 **S. 271D : Penalty-Takes or accepts any loan or deposit-Share application money in cash-Looking into the object and purpose of S. 269SS and 269T read with the Explanation defining the words "loan and deposit", the share application money can neither be said to be loan nor a deposit-Order of Tribunal deleting the penalty is affirmed. [S. 269SS, 269T, 271E, 260A]**

Dismissing the appeal of the Revenue the Court held that the words "loan or deposit" has been defined in Expln. (iii) to S. 269T which is not an expansive definition. It provides that "loan or deposit" mean any loan or deposit of money which is repayable after notice or repayable after a period and, in case of a person other than a company including loan or deposit of any nature. Share application money is neither repayable after notice nor repayable after a period. It is for participation in the capital of the company. Therefore, neither as per the definition of the words "loan or deposit" as given in the Expln. (iii) to s. 269T nor in ordinary sense, share application money can be said to be a loan or deposit. Once share application money is neither loan nor deposit, then neither S. 269SS nor 269T shall attract. Consequently, no penalty either under s. 271D or under S. 271E could be imposed. (AY-2004-05 to 2007-08)

CIT v. Vamshi Chemicals Ltd. (2024) 339 CTR 577/ 162 taxmann.com 906 (Cal) (HC)

2914 **S. 271D : Penalty-Takes or accepts any loan or deposit-Cash received-Sale of rights in property-Property was registered in June 2016-Amendment is prospective-Specified sum explanation introduced with effect from 1-6. 2015 [S. 269SS]**

Held that cash was received before 1-6-2015 in relation to the sale of rights in property, the provision of section 269SS & 271D is not applicable. The amendment specified sum explanation was introduced with effect from 1-6 2015. (AY. 2017-18)(ITA No. 2310/ Del/ 2023 dt. 12-7-2024.

Renu Bala v. Addl. CIT (2024) Chamber's Journal-August-P. 173 (Delhi)(Trib)

S. 271D : Penalty-Takes or accepts any loan or deposit-Assessment order quashed by the Tribunal-Satisfaction recorded shall not survive-Penalty is deleted. [S. 143(3), 147, 271E] 2915

Held that reassessment order is quashed by the Tribunal hence the satisfaction recorded for initiating penalty u/ s 271D / 271E shall not survive. Penalty is deleted. (AY. 2010-11, 2011-12) (ITA No. 4140/4141 /Mum/2023 dt. 28-6-2024)

Ravi Nirman Nigam Ltd v. ACIT (2024) Chamber's Journal-July-P. 125 (Mum)(Trib)

S. 271D : Penalty-Takes or accepts any loan or deposit –Receipt of share application money in cash-The amount received by the assessee towards share application money did not fall under the purview of loan or deposits under S. 269SS and consequently, penalty under s. 271D was not leviable. [S. 269SS] 2916

Held that the very basis of reference by the AO to the Jt. CIT for initiation of penalty proceedings for violation of s. 269SS is wholly and solely guided by the fact that the amount of share application money has been received from the existing promoters/ shareholders in cash. Similarly, the Jt. CIT while initiating the penalty proceedings has solely relied on the reference so received from the AO and without any independent application of mind has initiated the penalty proceedings and issued the penalty notice under s. 271D. (AY. 2012-13)

Dy. CIT v. James Hotels Ltd. (2024) 232 TTJ 976 / 38 NYPTTJ 1283 (Chd.)(Trib.)

S. 271D : Penalty-Takes or accepts any loan or deposit –Metal deposits-Gold or silver in physical form followed by corresponding journal entries made in the books of account terming them as unsecured loans-Penalty is not leviable. [S. 269SS] 2917

Assessee is engaged in jewellery business. It has taken metal deposits i. e., gold or silver in physical form followed by corresponding journal entries made in the books of account terming them as unsecured loans. The AO levied penalty u/s 271D of the Act. on appeal the CIT(A) deleted the penalty. On appeal by Revenue the Tribunal held that provisions of S. 269SS is not attracted by accepting the precious metal commodities in physical form. As per Expln. (iii) to 269SS, loan or deposit for the purpose of this section means loans or deposits of money. Accepted loans/deposit of metal which did neither fall in category (1) i. e., loans or deposits of money nor in category (2) specified sum. As the transaction is outside the ambit of provisions of S. 269SS. Penalty under s. 271D is not attracted. Appeal of Revenue is dismissed. (AY. 2013-14)

DCIT v. Baphana Jewellers (P) Ltd (2024) 229 TTJ 117 / 237 DTR 41 / 38 NYPTTJ 268 (Pune)(Trib)

S. 271D : Penalty-Takes or accepts any loan or deposit –Sale of property-Distress sale constitute reasonable cause-Cash deposited in the bank-Levy of penalty is deleted. [S. 269SS, 273B] 2918

Tribunal held that the objective of the amendment proposed in S. 269SS is to curb generation of black money. On the facts the cash received by the assessee has been deposited by him into the bank account. Hence the same does not attract the provisions of S 269SS since there is no suppression of cash receipts by the assessee. The assessee has also offered the capital gains to tax. Further, the explanation given by the

assessee for receipt of sale consideration in cash that it was a distress sale constitutes a "reasonable cause" as contemplated in S. 273B and the assessee has accepted the cash under inevitably unavoidable circumstances as explained by the Authorised Representative in his arguments and immediately on receipt of the cash, the assessee deposited the same in the bank account which contemplates the genuineness of the transaction and moreover, the assessee has paid the capital gain tax thereon. Under these circumstances, the penalty levied by the AO under s. 271D and confirmed by the CIT(A) is unsustainable. Penalty is deleted. (AY. 2017-18)
Vijapurapu Sudha Rao L/R Of Vijapurapu Suryanarayana Rao (Smt.) v. ITO [2023] 157 taxmann.com 669 /(2024) 228 TTJ 131 / 234 DTR 276 (Vishakha) (Trib)

2919 **S. 271D : Penalty-Takes or accepts any loan or deposit –Book adjustment entries-No violation of section. 269SS-Penalty is deleted. [S. 269SS]**
The asseessee passed book entries and credited parties. The Assessing Officer held that the assesseee violated the provisions of section 269SS and levied penalty under section 271D of the Act. CIT(A) affirmed the order of the AO. On appeal Tribunal held that, book entries do not represent any loan or deposit taken or accepted by the assessee by violating the provisions of S. 269SS and, therefore, no penalty is leviable under S. 271D. (AY. 2016-17)
Nilons Enterprises (P) Ltd. v. JCIT (2023) 37 NYPTTJ 1363 (2024) 227 TTJ 757 / 234 DTR 9 / 161 taxmann.com 566 (Pune)(Trib)

2920 **S. 271D : Penalty-Takes or accepts any loan or deposit –Sale of immoveable property-Stock in trade-Sale deed registered-No deliberate defiance of law-Penalty is deleted. [S. 269SS]**
Held that there is no deliberate defiance of any law and the assessee had not been dishonest or acted in conscious disregard of any legal obligation. Even if there had been a breach of law, it was from a bona fide belief that cash payments were legally acceptable. The lump sum cash had been received against sale of immovable property before the Government registration authority, and the sale deed had been duly registered under its stamp and signature. Levy of penalty is deleted. (AY. 2016-17)
Aggarwal Construction Co. v. Dy. CIT (2024)116 ITR 372 / 232 TTJ 455 / 243 DTR 273 / [2025] 171 taxmann.com 218 (Amritsar)(Trib)

2921 **S. 271D : Penalty-Takes or accepts any loan or deposit-Receipt of consideration for sale of immovable property in cash-Registered document duly signed by vendor and purchaser showing receipt in cash-Wrong entry-Adjustment thorough a journal entry-Failure to modify in the document-Levy of penalty is affirmed. [S. 269SS, 274]**
Dismissing the appeal the Tribunal held that the registered document filed by the assessee, wherein all the pages were duly signed by both the vendor and purchaser, clearly showed that the assessee had received part of the sale consideration of Rs. 1,60,00,000 in cash. The contention of the assessee that the consideration clause of the deed of sale had wrongly entered the mode of transaction as cash while in reality it was an adjustment of an existing debt through a journal entry was not tenable in any court of law in the absence of any material evidence. If the assessee had a claim that a

wrong entry had been made in a document, which was duly signed by both the vendor and purchaser and registered by the Sub-Registrar of the State Revenue Department the assessee should have approached the Appellate Authority of the Tamil Nadu State Revenue Department for any modification, addition or deletion, which was not done in this case. Under the above facts and circumstances, the Commissioner (Appeals) had rightly confirmed the penalty levied under section 271D of the Act. (AY. 2017-18)
Nammalvar Lingusamy v. ACIT (2024)110 ITR 31 (SN) (Chennai)(Trib)

S. 271D : Penalty-Takes or accepts any loan or deposit –Cash received from purchaser as final payment before Sub-Registrar at the time of registration of sale deed of property-Levy of penalty is not valid. [S. 269SS] 2922

Assessee sold a property and certain sale consideration was received in cash. AO levied penalty under section 271D for violation of provisions of section 269SS. The tribunal relied on the decision of Co-ordinate Bench in the case of *ITO v. R. Dhinagharan (HUF) [ITA No. 3329/CHNY/2019, dt. 29-12-2023]*, wherein the term 'specified sum' as per Explanation to section 269SS, is only applicable for advance receivable, namely, 'as advance or otherwise' means advance can be in any manner, and therefore, this provision will not apply to transaction that happens when final payment at the time of registration of sale deed and payment takes place before Sub-Registrar for registration of property. Assessee received cash from purchaser, not as advance, but as final payment in front of Sub-Registrar at the time of registration for sale of property, there was no violation of provisions of section 269SS and hence, penalty under section 271D was not leviable. [AY 2018-19] [ITA No. 488/Hyd/2023 dated 19/03/2024]
Ramkumar Reddy Satty v. ACIT (Hyd)(Trib) (UR)

S. 271DA : Penalty for failure to comply with provisions of section 269ST –Attachment of bank account-Pendency of appeal before CIT(A)-Directed to remit a certain amount-Attachment is directed to be lifted. [S. 12A, 80G, 269ST, Art. 226] 2923

Assessee, an educational institution received certain amount as donation by a cheque from a donor. Assessing Officer imposed penalty under section 271DA for violation of section 269 ST. He also attached bank account of assessee. Assessee against penalty order filed an appeal before Commissioner (Appeals), which was still pending. On writ seeking directions to Assessing Officer to lift attachment of its bank account. Court directed the assessee to remit a certain amount as a condition for raising attachment of its bank account and upon receipt of said amount attachment order shall stand raised and assessee shall be free to operate its bank account. (SJ)
Raj Educational Trust v. Dy. CIT(E) (2024) 298 Taxman 369 (Mad.)(HC)

S. 271DA : Penalty for failure to comply with provisions of section 269ST-Transactions in cash exceeding prescribed limit-Bifurcating bills to each customer-Technical or venial breach-Penalty is deleted. [S. 269ST] 2924

Held that penalty is not imposable when there is technical or venial breach of the provisions of the Act. The items purchased were marriage dresses and different items. The legislative intent in the introduction of sections 269ST and 271D was to curb black money by discouraging cash transactions and promoting digital economy. Keeping in

view the entire facts and peculiar circumstances of the case, no penalty was leviable in this case. (AY. 2018-19)
Finesse International Design P. Ltd. v. Add. CIT (2024) 111 ITR 37 (SN)(Delhi)(Trib)

2925 **S. 271F : Penalty-Return of income-Failure to furnish-Penalty cannot be levied if the estimated total income was less than maximum amount chargeable to tax-The basis of determination income in the assessment order cannot be said to be the basis for filing of return of income under section 139(1) of the Act-Penalty is deleted. [S. 139(1), 144, 147, 148]**
Held that penalty under section 271F cannot be levied if estimated total income was less than maximum amount chargeable to tax, even though assessed income may have been greater than maximum amount not chargeable to tax. The basis of determination income in the assessment order cannot be said to be the basis for filing of return of income under section 139(1) of the Act. Penalty is deleted. (AY. 2013-14 to 2016-17) (ITA Nos 759 to 762, 764 to 767 /Ahd/ 2023 dt. 21-2-2024)
Maheshbhai Prabhudas Gandhi v. ITO (2024) BCAJ-May-46 (Ahd)(Trib)

2926 **S. 271F : Penalty-Return of income-Failure to furnish-Non-Resident-Pendency of appeal before Tribunal-Order passed by the CIT(A) confirming the levy of penalty is set aside and the issue is restored back to the AO-AO is directed to take up the issue of penalty after the disposal of the appeal filed by the assessee before the Tribunal and decide the issue in accordance with the law. [S. 69A, 271(1)(b)]**
Held that the assessee, a non-resident, having earned income outside India, was not required to file return of income in India; unless the Tribunal decides the issue of addition made by the AO, it cannot be said that the assessee is having taxable income in India and that he was required to file his return, and, therefore, AO erred in levying penalty under s. 271F. Issue is restored back to the AO for deciding the same after disposal of the appeal filed by the assessee before the Tribunal. As regards penalty u/s 271(1)(b) also the issue is restored back to the AO for deciding after disposal of the appeal filed by the assessee before the Tribunal (AY. 2016-17, 2017-18)
Mohd. Wajahat Ali Khan v. ITO (IT) (2024) 231 TTJ 1082 / 242 DTR 51 (Hyd)(Trib)

2927 **S. 271G : Penalty-Documents-International transaction-Transfer pricing-Failure to furnish information or documents-Change In Law-Default occurring prior to date of amendment conferring jurisdiction on Transfer Pricing Officer to impose penalty-Transfer Pricing Officer had no jurisdiction prior to Amendment i. e on October 1, 2014-SLP of Revenue is dismissed. [S. 2(7A), 92D(3), Art. 136]**
Allowing the petition the Court held that since the "event of default" in March, 2014 occurred prior to the date of the amendment coming into force, October 1, 2014 the penalty order passed by the Transfer Pricing Officer was without jurisdiction. SLP of Revenue is dismissed. Followed, *Varkey Chacko v. CIT (1993) 203 ITR 885 (SC)/ 1994 Suppl (1) SCC 264* (AY. 2011-12)
Add. CIT v. Ericsson India Pvt. Ltd. (2024)468 ITR 2 (SC)
Editorial : Ericsson India Pvt. Ltd. v. ACIT (2018) 305 CTR 584 / (2019) 411 ITR 333 (Delhi)(HC)

S. 271G : Penalty-Documents-International transaction-Transfer pricing-Arm's Length Price-Domestic transactions-Reference to Transfer Pricing Officer-Clause (I) Of Section 92BA(i)) is omitted By Finance Act, 2017, with effect from 1-4-2017-Penalty is deleted. [S. 92BA, 92CA] 2928

Held, that the transfer pricing adjustment was made with respect to the specified domestic transactions covered under section 92BA(i), which clause was omitted by the Finance Act, 2017, with effect from April 1, 2017. Since there was no applicability of transfer pricing provisions to the specified domestic transactions of the assessee covered under section 92BA(i), there could not be any requirement of maintenance of the document. The assessee cannot not be penalised for not mainttainng the documents. (AY. 2016-17)

ITO v. Aura Spinwell Ltd. (2024)114 ITR 29 (SN)(Mum)(Trib)

S. 271G : Penalty-Documents-International transaction-Transfer pricing-TPO had not proposed any adjustment-Levy of penalty is not justified. [S. 92C, 92D] 2929

TPO had accepted ALP; however, he proceeded to levy penalty under section 271G for reason that assessee had not furnished required informations. CIT(A) deleted the penalty. On appeal the Tribunal held that since substantial compliance was made by assessee and reasonable cause submitted before TPO and particularly when there was no adjustment made in arm's length price, penalty under section 271G is rightly deleted. (AY. 2011-12)

ACIT v. Eurostar Diamonds India (P.) Ltd. (2024) 205 ITD 324 (Mum) (Trib.)

S. 272A : Penalty-Failure to answer questions-Sign statements-Furnish information-Substantial compliance-Levy of penalty is not justified. [S. 143(3), 272A(1)(d)] 2930

Assessee for non-compliance of notices issued during the course of assessment proceedings. Assessee submitted that it made necessary compliances to various notices and also in many cases, it was granted less than two days to respond to notices, which was clear violation of principles of natural justice. Assessee further submitted that as it substantially complied with various notices and assessment was completed under section 143(3), the penalty so levied was to be deleted. Assessee had responded to notices by furnishing necessary information/documentation during the course of assessment proceedings and supporting evidences were placed on record, therefore, there could not be any basis for levy of penalty as far as non-compliance of said notices were concerned. Further three notices were issued, whereby assessee was asked to comply within a period of two hours and that too, on a day which was a public holiday, i. e. Sunday. Thus, it was clear that AO for reasons best known to him, issued three notices one after the another, and that too, on the day, which was a public holiday and asking the assessee to respond to said notices within period of two hours, which was evidently not reasonable and in any case, could not be a basis to press charges as far as deliberate non-compliance on the part of assessee. Further, considering the fact that substantial compliances were made by assessee and assessment was completed under section 143(3), there was no justifiable basis for levy of penalty under section 272A(1)(d) and hence, the penalty so levied, was deleted. [ITA No. 364/Chd/2023 dated 05/03/2024] (AY. 2017-18)

Pawan International v. ITO (Chd)(Trib) (UR)

2931 **S. 272A : Penalty-Failure to answer questions-Sign statements-Furnish information-Penalty cannot be levied when the assessment is completed u/s 143(3)-Penalty is deleted. [S. 272A(1)(d), 274]**

Assessing Officer initiated penalty proceedings under section 272A(1)(d) on ground that during scrutiny assessment proceedings, notice under section 143(2) and section 142(1) were issued to assessee, however assessee had not responded to said notices. Though the assessee failed to respond to certain notices issued under sections 143(2) and 142(1), however, in response to subsequent notices, assessee had made necessary replies and accordingly assessment was completed under section 143(3). On appeal the Tribunal held that penalty imposed under section 272A(1)(d) was not justifiable as Assessing Officer himself had deemed to have condoned absence of assessee on earlier occasions and subsequently necessary information and evidences were furnished by assessee to assist in completion of assessment. (AY. 2020-21)

Bhavna Modi v. ITO [2025] 170 taxmann.com 236 (Raipur)(Trib.)

2932 **S. 272A : Penalty-Failure to answer questions-Sign statements-Furnish information-Additional evidence-Matter remanded to the file of the Assessing Officer. [S. 194C, 272A(2)(k)),R. 18(4)]**

Tribunal held that since the assessee had submitted certain additional evidences under rule 29, read with rule 18(4) which were not available before Assessing Officer/ Commissioner (Appeals) for their perusal, matter was to be remanded for verification as well as examination of evidences furnished by assessee. Matter remanded. (AY. 2011-12, 2012-13)

Block Resources Coordinator Rajiv Gandhi Siksha Mission v. ITO (TDS) (2024) 204 ITD 408 (Raipur) (Trib.)

2933 **S. 275 : Penalty-Bar of limitation-Natural justice-Delay of ten years in issuing show cause notice-Notice issued in November 2017-Barred by limitation-Order of High Court is affirmed-SLP of Revenue is dismissed. [S. 271, 274, 275(1)(c)]**

The principles of natural justice are engrafted under section 274 of the Act, inter alia, mandate that no order imposing a penalty under the Chapter, i. e., Chapter XXI shall be made unless the assessee has been heard, or has been given a reasonable opportunity of being heard. Court held that the initial return qua the assessment year in issue, i. e., assessment year 2007-08 was filed on March 31, 2007, and the revised return was filed on March 31, 2009. The scrutiny assessment under section 143(3) concerning the assessment year 2007-08, was framed on October 28, 2011. Despite the fact that the issue concerning limitation was flagged as far back as on September 9, 2013, and then again in an internal communication dated July 11, 2014, no steps were taken for the issuance of a show-cause notice. The show-cause notice was issued only on November 9, 2017. The delay in issuing the show-cause notice dated November 9, 2017 was inexcusable. There was no explanation, whatsoever, available on the record, as to why the show-cause notice under section 274 of the Act was not issued in 2013-14, if not earlier. As a matter of fact, there was no explanation, even with regard to the period falling between the time when the scrutiny assessment was framed (i. e., on October 28, 2011) and the communication dated September 9, 2013. Thus, even if the period

for commencement of limitation prescribed in terms of the second limb of clause (c) of sub-section (1) of section 275 were considered, limitation would commence either from 2013 or 2014. There was a period of unexplained substantial delay, as the show-cause notice, concededly, was issued only on November 9, 2017. The show-cause notice dated November 9, 2017 was quashed. Order of High Court is affirmed. SLP of Revenue is dismissed. (AY. 2007-08)

Jt. CIT v. Clix Capital Services (P.) Ltd. (2024) 298 Taxman 90 / 464 ITR 768 (SC)

Editorial : Clix Capital Services (P.) Ltd v. JCIT (2023) 149 taxmann.com 279/ 459 ITR 470 / 334 CTR 574/ 225 DTR 232 (Delhi)(HC)

S. 275 : Penalty-Bar of limitation-Concealment of income –Disallowance of claim-Depreciation. [S. 22, 24, 32, 271(1)(c)] 2934

Assessee is running a hospital. It filed its return declaring income from lease rent as income from house property claiming 30 per cent standard deduction under section 24 and also depreciation on fixed assets-Assessing Officer treated income of assessee as income from business and initiated penalty proceedings under section 271(1)(c) on ground of furnishing inaccurate particulars. The AO passed the penalty order dated 13-8-2021. Thereafter, he revisited penalty proceedings and passed another order dated 1-4-2022. CIT(A) confirmed the penalty. On appeal the Tribunal held that within six months from end of month in which Appellate Tribunal passed orders, Assessing Officer became functus officio and he had no jurisdiction to pass second penalty order beyond period prescribed under section 275(1). Therefore, Assessing Officer having passed second penalty order beyond period prescribed under section 275(1), said order is set aside. (AY. 2016-17)

Kamal Enterprises and New Life Hospital v. DCIT (2024) 206 ITD 90 (Hyd.)(Trib.)

S. 275A : Offences and prosecutions-Search and Seizure-Prohibitory order-Contravention-Bank Officials mistakenly reading order to extend to Locker also and permitting operation of Locker-Prosecution of Bank for offences of fraud, criminal breach of trust, misappropriation and conspiracy-Bank is a juristic person and question of Mens Rea did not arise-Nothing in first information report or complaint to show bank or its staff members had dishonestly induced someone to deliver any property to any person, and that Mens Rea existed at time of such inducement-No allegation of entrustment of property which bank had misappropriated or converted for its own use to detriment of Department-First Information Report or complaint not showing that bank and its officers acted with common intention or intentionally co-operated in commission of any alleged offences-Continuation of criminal proceedings against appellant-Bank would cause undue hardship to appellant-Bank-First information report is quashed-Prosecution against bank and its officials quashed-Order of High Court is set aside. [S. 131(IA), 132(1) 132(3), Code Of Criminal Procedure, 1973, S. 34, 37, 120B, 155(2), 201, 206 217, 406, 409, 420, 462] 2935

High Court dismissed the petition to quash the criminal proceedings against Bank and its officials. On allowing the appeal the Court held that, for bringing out the offence under the ambit of section 420 of the Code, the first information report must disclose the following ingredients : (a) that the appellant-bank had induced anyone since

inception ; (b) that the inducement was fraudulent or dishonest ; and (c) that mens rea existed at the time of such inducement. The appellant-bank was a juristic person and as such, the question of mens rea did not arise. However, even reading the first information report and the complaint at their face value, there was nothing to show that the appellant-bank or its staff members had dishonestly induced someone to deliver any property to any person, and that mens rea existed at the time of such inducement. The ingredients to attract the offence under section 420 of the Code would not be available. The Court also held that in so far as the provisions of section 409 of the Code were concerned, the following ingredients had to be made out : (a) that there had been any entrustment with the property, or with any dominion over property on a person in the capacity of a public servant or banker, etc. ; (b) that the person committed criminal breach of trust in respect of that property. For bringing out the case under criminal breach of trust, it had to be pointed out that a person, with whom entrustment of a property is made, has dishonestly misappropriated it, or converted it to his own use, or dishonestly used it, or disposed of that property. In the present case, there was not even an allegation of entrustment of the property which the appellant-bank had misappropriated or converted for its own use to the detriment of the Deputy Director (Investigation). The provisions of sections 406 and 409 of the Code would also not be applicable. That since there was no entrustment of any property with the appellant-bank, the ingredients of section 462 of the Code were also not applicable. That likewise, since the offences under sections 206, 217 and 201 of the Code required mens rea, the ingredients of these sections also would not be available against the appellant-bank. That the first information report or complaint also did not show that the appellant-bank and its officers acted with any common intention or intentionally co-operated in the commission of any alleged offences. The provisions of sections 34, 37 and 120B of the Code would also not be applicable. That, therefore, the continuation of the criminal proceedings against the appellant-bank would cause undue hardship to the appellant-bank. Accordingly the First information report is quashed consequently the prosecution against bank and its officials is quashed. Order of High Court is set aside.

HDFC Bank Ltd. v. State of Bihar (2024)468 ITR 650 / 167 taxmann.com 600/ 301 Taxman 538 (SC)

Editorial : HDFC Bank Ltd. v State of Bihar (2022) 448 ITR 103 (Pat)(HC)

2936 **S. 276 : Offences and prosecutions-Wilful attempt to evade tax-Under reporting of income-Search-Settlement Commission-Pending criminal prosecution is not brought to knowledge of Settlement Commission-Immunity against prosecution granted by Settlement Commission without knowledge of pending prosecution-Provisions of Section 245I is not applicable-Prosecution cannot be quashed. [S. 132, 245C, 245H(1), 245-I, 277, Art. 226]**

In search proceedings it was found that the assessee had failed to maintain any proper books of account in accordance with accounting practice and had filed returns of income based on notional value, that the entire business was predominantly in cash, that sales were suppressed and expenses under-reported. Therefore, sales for the period from the financial year 2008-09 were worked out by reverse working the sales for each of the outlets from the date of the commencement of business operation at each of the

outlet, giving 15 per cent. allowance for each of the assessment years 2010-11 to 2014-15 and the net profit was computed at around Rs. 22 crores. The assessee admitted a sum of Rs. 4 crores as undisclosed income. The Director (Inv) initiated criminal proceedings under section 277 on the grounds that the assessees had wilfully under-reported the income by filing false and incorrect returns of income thereby evading tax. The assessee filed the petition before the Settlement Commission which was allowed and order under section 245D(4) read section 245I was passed. The assessee filed criminal petitions to quash the proceedings initiated by the Director (Inv). Dismissing the petitions, the Court held that the assessee had filed an application before the Settlement Commission under section 245C of the Act, on January 22, 2018 whereas the prosecution was initiated two years before that, on November 17, 2016 itself. Therefore, the provisions under section 245-I of the Act were not applicable. The factum of pending prosecution was not brought to the notice of the Settlement Commission and the assessees had obtained immunity in respect of prosecution. That apart, as against the immunity granted by the Settlement Commission, the Department had filed an appeal and it was pending before the Board. Therefore, the criminal proceedings were not to be quashed. (AY. 2010-11 to 2014-15)

S. S. Hyderabad Biriyani Pvt. Ltd. v. Dy. CIT (Inv) (2024)465 ITR 391/ 160 taxmann.com 417 (Mad)(HC)

S. Abdul Samd v. Dy. DIT(Inv) 2024)465 ITR 391/ 160 taxmann.com 417 (Mad)(HC)

S. 276B : Offences and prosecutions-Failure to pay to the credit tax deducted at source-Educational institution-Fee reimbursement-90 per cent of students delayed the payment of fees-Reasonable cause-Criminal prosecution is quashed. [S. 192B, 194A 194C, 194J, 201(1)(a), 278AA, 279, Criminal Procedure Code, 1976, S. 482] 2937

The assessee deducted tax at source under different sections in expenditure incurred but failed to credit same into Central Government account within stipulated time frame. Commissioner filed criminal complaints against assessee for offence under section 276B. The petitioner has filed petition to quash the Criminal proceedings. Allowing the petition the Court held that 90 per cent of students were admitted on fee reimbursement scheme and assessee had furnished information that they did not receive fee reimbursement from State Government within time. Immediately after receiving fee reimbursement amount, they had remitted amount to Central Government account along with interest for late payment under section 201(1)(a). Court held that since tax deducted at source could not be remitted to Central Government within time due to delay in grant of fee reimbursement by State Government, assessee was able to establish reasonable cause hence criminal prosecution is quashed. (AY. 2014-15 to 2016-17)

Aditya Institute of Technology and Management v. State of Andhra Pradesh (2024)471 ITR 262/ 163 taxmann.com 738 (AP)(HC)

S. 276B : Offences and prosecutions-Failure to pay to the credit tax deducted at source-Compounding of offences-Application for compounding-Delay in application-Discretion of authority to condone delay should be exercised in judicious manner. [S. 279] 2938

The application for compounding of application is rejected by the Commissioner on account of delay in filing of the application. On writ the Court held, that the application

was filed on January 17, 2020 for compounding the offence under section 276B of the Income-tax Act, 1961. But it was not supported by an affidavit and was not complete. But when on February 5, 2020, the affidavit was filed, that affidavit was filed to verify the statements made in the application dated January 17, 2020. The appropriate authority, having adopted a technical approach, held the main application to have been filed beyond the prescribed period, i. e., January 31, 2020. That was a wrong approach. First of all, the affidavit was filed for verification of the statements in the application dated January 17, 2020. By filing the affidavit, the defect in the application stood removed. Thereafter, it could not be held that the application for compounding was filed on February 5, 2020. The rejection of application for compounding of offences was not valid. Court also observed that where there is a delay in filing an application for compounding an offence a power of relaxation has been granted to the authority who considers the compounding application. Such power shall be invoked in appropriate cases to advance the cause of justice.

SMV Beverages Pvt. Ltd. v. PCIT (2024)469 ITR 540 (Orissa)(HC)

2939 **S. 276B : Offences and prosecutions-Failure to pay to the credit tax deducted at source-Reasonable cause-Paid tax with interest-Prosecution is quashed. [S. 278AA, Criminal Procedure Code, 1973, S 482]**

Allowing the petition the Court held that reason provided by the assessee for the delay in remitting the amount to the Central Government is sufficient to constitute reasonable cause. Accordingly criminal prosecution against the assessee's is not warranted. Court also held that there is no dispute that the assessees have paid the tax along with late payment interest. Prosecution is quashed. Relied, *US Technologies International (P) Ltd. v. CIT (2023) 332 CTR 176 / 224 DTR 265 (SC)* (AY. 2014-15 to 2016-17)

Aditya Institute of Technology & Management v. State of Andhra Pradesh (2024) 340 CTR 208 / 240 DTR 447/ 163 Taxmann.com 738 (AP)(HC)

2940 **S. 276B : Offences and prosecutions-Failure to pay to the credit tax deducted at source-Deposit of tax deducted at source before initiation of prosecution proceedings along with interest-No penalty proceeding is initiated-Criminal proceedings are quashed. [S. 278B]**

The prosecution was launched for delay in depositing the tax deducted at source. The petitioner filed the petition before the High court to quash the proceedings on the ground that entire tax deducted at source was deposited before launching of the proceedings and the no penalty proceeding was initiated. Allowing the petition the Court held that the assessee has already deposited the TDS amount along with the interest. Accordingly the court held that to allow the proceeding to continue further will amount to abuse of process of law. Accordingly, the entire criminal proceeding including the order taking cognizance is quashed. (AY. 2015-16)(SJ)

A. M. Enterprises v. State of Jharkhand (2024) 338 CTR 497 (Jharkhand) (HC)

S. 276B : Offences and prosecutions-Failure to pay to the credit tax deducted at source-Delay of 394 days for depositing the TDS amount deducted-Deposited the TDS with interest-Delay was due to factors like market sluggishness, insolvency proceedings, and COVID-19 pandemic, with no mens rea involved-Proceeding is quashed. [S. 276B, 278B, 279(1)] 2941

Assessee failed to deposit TDS amounts for Financial Year 2019-20 within statutory period, leading to a complaint case under sections 276B and 278B. Despite later depositing TDS amount with interest, prosecution was sanctioned under section 279(1). Assessee explained that delay was due to factors like market sluggishness, insolvency proceedings, and COVID-19 pandemic, with no mens rea involved. Allowing the petition the Court held that authorities ought to have taken into consideration explanation offered by assessee particularly for reasons that company had suffered I. B. proceeding and restriction imposed during COVID-19 pandemic. Further since in instant case prosecution indeed had been initiated by opposite parties after having received TDS amount along with interest, in such circumstances, entire proceedings initiated against assessee is quashed. Circular No. F. No. 285/90/2008-IT(Inv-I)/05, dated 24-4-2008. (AY. 2020-21)

Sree Metaliks Ltd. v. UOI (2024) 299 Taxman 227 /(2025)472 ITR 141 (Orissa)(HC)

S. 276B : Offences and prosecutions-Failure to pay to the credit tax deducted at source-Principal officer-Merely because a person holds an office in a corporate entity, it would not be sufficient to place that individual in clause (b) of section 2(35); he must be connected with management and administration of company Matter remanded. [S. 2(35)(b), Art. 226] 2942

Petitioner, CEO of assessee-company, was served with show cause notices treating him to be 'Principal Officer' and asking him to show cause in respect of default by the company to deposit TDS for financial years 2016-17 and 2017-18. Petitioner pointed out that he was appointed as Managing Director only on 2-5-2017 and had resigned from that post on 2-3-2018 and he could not be possibly held to be person responsible for financial year 2016-17 and for other year he was not connected with or in charge of accounting or financing activities pertaining to company. Department issued a corrigendum and declared that petitioner was Principal Officer of assessee-company. On writ the Court held that merely because a person holds an office in a corporate entity, it would not be sufficient to place that individual in clause (b) of section 2(35); he must be connected with management and administration of company. Accordingly order holding petitioner as principal officer for purpose of initiation of prosecution under section 276B is set aside and Assessing Officer is directed to examine afresh question as to whether assessee could be said to be a person connected with management or administration of company in question. Matter remanded. (AY. 2017-18, 2018-19)

Varun Sood v. ACIT (2024) 298 Taxman 292 / 471 ITR 298 (Delhi)(HC)

S. 276B : Offences and prosecutions-Failure to pay to the credit tax deducted at source-Reasonable cause-Concerned staff was on leave-Proceedings are quashed. [S. 201(1), 278AA, Art. 226] 2943

Assessee was running an education institution and was required to deduct TDS in respect of expenditure covered by provisions of Chapter XVII-B. Assessee though having

deducted TDS, remitted same belatedly. Prosecution was initiated against assessee under section 276B read with section 278AA. The assessee contended that delay was not caused wantonly, but only due to fact that concerned staff who was looking after accounts had left concern on maternity leave and it was subsequently rectified and thereafter, assessee had deducted tax amount properly and remitted same without any delay. On writ considering the facts, proceedings initiated against assessee is quashed. (SJ)
Sengoda Gounder Educational and Charitable Trust v. ITO (2024) 298 Taxman 776 (Mad.) (HC)

2944 **S. 276B : Offences and prosecutions-Failure to pay to the credit tax deducted at source-Principal Officer-An independent, non-executive, and nominee director-Prosecution is quashed and set aside. [S. 2(31), 2(35)(b), 278B]**
The petitioner served as an independent, non-executive, and nominee director on the Board of a company from 27-6-2007 to 12-11-2011. For the financial year 2008-09, the company failed to deposit the TDS to the credit of the Central Government within the prescribed period; however, this amount was subsequently paid by the company in September 2010.
The petitioner became aware of the criminal case and the orders passed thereunder only on 5-9-2022, when he received a copy of the summons dated 3-8-2022. The petitioner submitted that he was never served with any notice treating him as a principal officer as required under clause (b) of section 2(35) to initiate a prosecution under section 276B read with 278B. Hence, he prayed to Court to quash the Criminal Case filed against him for the offence punishable under sections 276-B read with 278-B.
Section 276-B lays down the punishment for non-payment of tax deducted at source to the credit of the Central Government as required under Chapter XII-D or XVII-B of the I. T. Act. Court held that in order to treat a person as a Principal Officer as defined under section 2(35)(b), Assessing Officer must have served upon him a notice of his intention of treating him as principal officer of company. Where notice as contemplated under section 2(35) had not been served upon petitioner, who was an independent, non-executive, and nominee director on Board of company, before initiating prosecution against him under purview of sections 276B and 278B, prosecution proceedings initiated against him and orders are quashed and set aside. (AY. 2009-10) (SJ)
Anish Modi v. UOI (2024) 297 Taxman 490 /469 ITR 487 (Bom.)(HC)

2945 **S. 276B : Offences and prosecutions-Failure to pay to the credit tax deducted at source-Pendency of proceedings before BIFR-Reasonable cause – TDS deposited before issue of notice-Criminal proceedings are quashed. [S. 278AA]**
Complaint was filed against assessee company for delay in depositing TDS amount. The petitioner filed the criminal miscellaneous application to quash the proceedings on the ground that the entire TDS amount had been deposited before issuance of notice and delay was due to pending BIFR proceeding since 1991 and industrial sickness of company. Allowing the petition the Court held that pending BIFR proceedings and industrial sickness constituted a reasonable cause for delay in deposit of TDS amount within stipulated time due reasonable cause, section 278AA will apply. Accordingly the order as well as entire criminal proceeding were quashed against assessee and directors.

Followed, *Dev Multicom (P) Ltd v. State of Jharkhand (2022) 138 taxmann.com 538/ (2023) 454 ITR 48/ 2022 SCC Online Jhar 537, SLP dismissed, A. M. Enterprises v. State of Jharkhand (W. P. (Cr.) No 577 of 2022 dt. 3/22-22 8-2023)* (AY. 2012-13)
Fusion Engineering Products (P.) Ltd. v. UOI (2024) 296 Taxman 202 (Jharkhand)(HC)

S. 276C : Offences and prosecutions-Search cases-Failure to furnish return-Search and seizure-Block Assessment for Assessment prior to 1-1-1997-No provision for prosecution prior to that date-SLP of Revenue is dismissed. [S. 132, 158BC(a)(ii), 158BFA, 277, 278B, 278E, Art. 136] 2946

Failure to show the additional income in the original return, prosecution was launched against the company and directors. The petitioners have filed a criminal revision petition to quash a prosecution for alleged offences under sections 276C(1) and 277 read with section 278B of the Income-tax Act, 1961, in respect of block assessment for the period April 1, 1985 to January 5, 1996. Allowing the petition the Court held that that there being no provision existing at the relevant point of time whereby the Income-tax Department could launch a prosecution as regards income disclosed in block assessments for the period between July 1, 1995 to January 1, 1997, automatically and as a direct consequence, quashing of prosecution was the only necessary corollary. SLP of Revenue is dismissed. (AY. 1-4-1985 to 5-1-1996)
Jt. CIT v. Suman Paper and Boards Ltd. (2024) 301 Taxman 401 / 468 ITR 106 (SC)
Jt. CIT v. Agarwal Paper Mills (P.) Ltd. (2024) 301 Taxman 231 (SC)
Editorial : Suman Paper and Boards Ltd v. JCIT (2023) 453 ITR 296 (Guj)(HC) / Suman Paper & Boards Ltd v. JCIT (2023) 148 taxmann.com. 433/ 454 ITR 296 (Guj) (HC)

S. 276C : Offences and prosecutions-Wilful attempt to evade tax-Search-Revised return-Claims of deduction were not accepted-Would not amount to wilful evasion of tax. [S. 132, 139(1), Code of Criminal Procedure, 1973, S. 482] 2947

Allowing the petition the Court held that the assessee had filed a revised return waiving off claims of deduction of long term capital gains / short term capital loss after search was conducted, is a case of delayed payment of tax. Accordingly the proceedings pending against assessee for offence punishable under section 276C(1) is quashed.
Anurag Bagaria v. ITO (2024) 158 taxmann.com 546 (Karn)(HC)

S. 276C : Offences and prosecutions-Wilful attempt to evade tax-Search and seizure-Jewellery found during search-Revision order-Pendency of assessment proceedings-Pendency of adjudication proceeding is not a bar on prosecution-Petition to quash the prosecution is dismissed. [S. 132, 153C, 263, 271(1)(c), 276C(1), 277, Art. 226] 2948

In response to notice under section 153C of the Act, the asseessee filed return of income and disclosed the gold ornaments which was found in the course of search. The AO assessed the income and levied the penalty u/s 271(1)(c) of the Act. On appeal the penalty is sustained. The Revenue has launched the prosecution against the assessee. On writ dismissing the petition the Court held that the Principal Commissioner had suo motu taken up revision proceedings by an order dated February 23, 2021, on the basis that no reconciliation was carried out. Though the proceedings were challenged by the

assessee before the court, it was rejected by the court. That the assessee had already filed a petition for discharge and that was also dismissed by the trial court. Now the reassessment proceedings were pending with the Assessing Officer. Therefore, it could not be said that the proceedings attained finality. Hence, there was no exoneration of the assessee from all the charges. Further, the quantum of jewellery found during the search was not brought out in the earlier returns filed by the assessee. Therefore, the reconciliation of jewellery had not attained finality, in view of the pendency of the proceeding under section 263 of the Income-tax Act, 1961. The adjudication proceedings and the criminal prosecution were independent of each other and the pendency of any adjudication proceeding was not bar to proceeding with the prosecution. (AY. 2012-13)
R. Revathy v. ACIT (2024) 470 ITR 69 (Mad) (HC)

2949 **S. 276C : Offences and prosecutions-Wilful attempt to evade tax-Concealment of income-Deletion of penalty-Prosecution is not valid. [S. 271(1)(c),**
Allowing the petition to quash the proceedings the Court held, that the Commissioner (Appeals) held in the appeal that the assessee was under the bona fide belief that there was no tax liability to be discharged by him on account of his residential status as non-resident external accounts and the deduction of tax at source made by the bank. Thus, the intention to conceal income by furnishing inaccurate particulars was not established. Therefore, the Assessing Officer was directed to delete the penalty imposed on the assessee. Once the penalty is deleted, the prosecution initiated by the could not be sustained. (AY. 2008-09)
Rohitkumar Nemchand Piparia v. Dy. CIT (Inv) (2024)469 ITR 593 / 156 taxmann.com 636 (Mad)(HC)

2950 **S. 276C : Offences and prosecutions-Wilful attempt to evade tax-Deletion of concealment penalty-Concealment-Acquittal by Trial Court-Presumption of innocence of accused-Appeal against acquittal is dismissed. [S. 271(1)(c), 277]**
Held, dismissing the appeal of the Revenue the Court held that on the same facts the penalties under section 276C and 277 had been deleted. The assessee had also been acquitted by the trial court. The acquittal was justified. (AY. 1980-81)(SJ)
UOI v. Pusparani Khana (2024)469 ITR 608 / 151 taxmann.com 249 (Orissa)(HC)

2951 **S. 276C : Offences and prosecutions-Willful attempt to evade tax-Tax paid with interest-No penalty provision-The assessee is not be allowed to suffer and to face criminal trial and same could not sustain in eyes of law. [S. 140A, 277, Art. 226]**
Assessee submitted income-tax return pointing out tax liability for relevant assessment year, however, tax liability was not deposited. Tax amount was deposited after certain delay and that was deposited with interest in light of section 140A. Assessing Officer initiated criminal proceedings against assessee under section 276C(1) for wilful attempt to evade tax. On writ the Court held that since tax amount was deposited with interest and there was no penalty provision against assessee, it would be presumed that there was no concealment and, thus, assessee could not be allowed to suffer and to face criminal trial and same could not sustain in eyes of law. Therefore, entire criminal

proceeding including cognizance order, by which, cognizance had been taken for offence under section 276C(2) and section 277 against assessee is quashed. (AY. 2011-12)(SJ)
Narendar Singh @ Narendra Singh v. UOI (2024) 301 Taxman 568 (Jharkhand)(HC)

S. 276C : Offences and prosecutions-Wilful attempt to evade tax-Failure to pay tax-Firm-Death of managing partner-Surviving partners unaware of tax dues-Self Assessment-Tax dues along with interest paid within five days of receipt of notice-No mala fide intention to evade tax-Mere failure to pay tax on time cannot be equated to wilful attempt to evade tax-Criminal prosecution quashed and set aside. [S. 276C(1), 276(2), 278B, Code Of Criminal Procedure, 1973, S. 482] 2952

Allowing the application the Court held that mere failure to pay the tax could not be equated with wilful attempt to evade tax. There was material to indicate that within five days of the notice under section 276C(2), the petitioners had deposited the tax due as declared in the return for the assessment year 2010-11 with interest thereon which showed that there was no intent to evade tax. Since the petitioners had declared the income and assessed the self-assessment tax, it could not be contended that there was an attempt to evade tax. It was neither a case of under-reporting of income nor that of showing diminished tax liability. On the date of the lodging of the complaint under section 276C(2) read with section 278B no tax was due including the interest, though there was delay of about eight years in paying the amount of self-assessment tax. The continuation of the prosecution for the offence punishable under section 276C(2) amounted to abuse of the process of the court. It was the conduct of the petitioners, after being served with the show-cause notice, that assumed significance. Payment of tax due under five days of the service of the notice, underscores the bona fides of the applicants. Therefore, the aspect of delay, did not detract materially from the applicants claim. No offence punishable under section 276C(2) had been made out. The criminal proceedings were quashed and set aside. *Kapildeo Prasad Sah v. State of Bihar (1999) 7 SCC 569 ; 1999 SCC (L&S) 1357 ; 1999 SCC OnLine SC 812, Tolaram Relumal v. State of Bombay (1954) 1 SCC 961 ; 1954 SCC OnLine SC 22, Gujarat Travancore Agency v. CIT (1989) 177 ITR 455 (SC)/ (1989) 3 SCC 52 ; 1989 SCC (Cri) 509 ; 1989 SCC (Tax) 389* (AY. 2010-11)
Unique Trading Company v. ITO (2024)467 ITR 682/298 Taxman 176 / 340 CTR 178 / 238 DTR 81 (Bom)(HC)

S. 276C : Offences and prosecutions-Wilful attempt to evade tax-Territorial jurisdiction or conspiracy-Accused has no locus standi to file application or raise any objections qua territorial jurisdiction, conspiracy or bias at pre-cognizance stage-Conspiracy cannot be ascertained merely by appreciating either documents or arguments-Issue of fact to be proved or disproved by parties leading evidence during trial-Parties approbating and reprobating and taking mutually destructive pleas is impermissible. [S. 276(1), 277, 278, 278B, 278E, Indian Penal Code, 1860, S. 120B, 191, 199, 200, 204, Code of Criminal Procedure, 1973, S. 200, 482] 2953

The Deputy Director (Investigation) made a complaint under section 200 of the Code of Criminal Procedure, 1973 against the assessees alleging commission of offences punishable under sections 276C(1), 277 and 278 read with sections 278B and 278E of

the Income-tax Act, 1961 and sections 120B, 191, 199, 200 and 204 of the Indian Penal Code, 1860. The gravamen of accusation against the accused persons was that accused No. 1, an I. A. S officer in the State of Chhattisgarh, was engaged in movement of unaccounted cash through different channels with regard to sectors such as agriculture, mining, liquor trade and licensing in the State of Chhattisgarh in connivance with the other accused persons. The magistrate directed the return of the complaint to the extent of those offences, which, according to him had arisen beyond the territorial jurisdiction of Delhi. The Department filed an application seeking stay of that portion of the order whereby the magistrate had returned the complaint in respect of the offences under the 1961 Act and the Indian Penal Code for filing them before the court of competent jurisdiction Court held that the accused respondents had no locus to either file an application or raise any objections qua territorial jurisdiction, conspiracy or bias at the pre-cognizance stage. Equally, the magistrate had, by entertaining such application and retaining the arguments on such objections and considering them, acted with material irregularity. Till the accused person was summoned by the criminal courts, he had no locus to interject or interfere with the proceedings before a magistrate. Till the cognizance of the offence was taken, the accused was not a person who was identified as such, for him to be vested with any right of audience, apart from the fact that it was possible that even after the preliminary inquiry under section 202 of the 1973 Code, the magistrate might dismiss the complaint, without even calling upon the accused. That the magistrate had committed procedural illegality and irregularity by not only entertaining the application but also hearing detailed arguments on behalf of the proposed accused person, admittedly at a stage when cognizance was yet to be taken violating the law as declared by the constitutional courts. That though the magistrate had applied his mind, he had misdirected himself to reach definitive conclusions on issues such as territorial jurisdiction and conspiracy without there being evidence on such aspects. It would be relevant to consider the provisions of section 178 of the 1973 Code whereby different situations in respect of an offence, where the offence was committed partly in one local area and partly in another, or where an offence was a continuing one and continued to be committed in more local areas than one, or where it consisted of several acts done in different local areas might be inquired into or tried by a court having jurisdiction over any of such local areas. That the definitive conclusion reached by the magistrate regarding the conspiracy was unsustainable. The allegation that the conspiracy had continued at Delhi needed to be tested in trial. He had definitively concluded that the conspiracy had ended in Chattisgarh and no part of it had continued till Delhi. This conclusion could not and ought not to have been reached by him, particularly at the stage where cognizance of the offences was to be taken. If such an order was made to stand, then at the stage of taking cognizance, the accused by mere arguments would get an opportunity to show that no such conspiracy was hatched, that too without any evidence. This would be contrary against all cannons of law and procedure. That the submissions of respondent Nos. 1, 2 and 3, that since there was no territorial jurisdiction to adjudicate upon the offences arising under sections 276C(1) and 278 read with sections 278B and 278E of the 1961 Act and sections 120B, 191, 199, 200 and 204 of the Indian Penal Code and therefore, there was no prejudice caused to the Department since that portion of the complaint in respect of those offences has been

returned to be filed at the court of competent jurisdiction in the State of Chattisgarh was erroneous and not only contrary but also destructive of the stand taken by them before the revisional court which granted stay on the basis that the magistrate had no right, authority or jurisdiction to split the complaint or the offences arising from the same transaction. A party could not be permitted to approbate and reprobate in the same breath or take mutually destructive pleas and their taking varying stands according to their own convenience was impermissible in law. That the operation of the order passed by the magistrate to the extent it returned the complaint qua the offences under sections 276C(1) and 278 read with sections 278B and 278E of the 1961 Act and sections 120B, 191, 199, 200 and 204 of the Indian Penal Code was restrained till further orders. The observations were prima facie in nature and were not tantamount to any expression on the merits of the matter at the present stage. Criminal conspiracy is an issue of fact and can be proved or disproved by the parties by leading evidence during trial and cannot be ascertained merely by appreciating either documents or arguments and therefore, no definitive conclusion on such issue can be reached by any court at the stage of taking cognizance. It is trite that conspiracy is an issue of fact which can be proved or disproved only during trial. Relied on *Purushottamdas Dalmia v. State of West BBengal (1962) 2 SCR 101 ; AIR 1961 SC 1589 (AY. 2020-21(SJ)*
ITO v. Anil Tuteja (2024)463 ITR 6/ 339 CTR 246/ 158 taxmann.com 203 (Delhi)(HC)

S. 276C : Offences and prosecutions-Willful attempt to evade tax –Paid self assessment tax with interest-Delayed payment of income tax would not amount to evasion of tax, there was no evasion of tax on part of assessee-company though there was a delay in payment of tax for which interest was paid-Prosecution launched is quashed. [S. 140A(3), 276(2), 278B, Art. 226] 2954

Assessee-company filed return of income and paid self-assessment tax belatedly along with interest. Assessing Officer issued on assessee-company and its directors show cause notice and filed a complaint against them under section 276C read with section 278B On writ the Court held that delayed payment of income tax would not amount to evasion of tax, there was no evasion of tax on part of assessee-company though there was a delay in payment of tax for which interest was paid. Accordingly the complaint filed against assessee-company and its directors and all consequential proceedings arising therefrom deserved is quashed. (AY. 2012-13)(SJ)
Hansa Metallics Ltd. v. Dy. CIT (2024) 298 Taxman 67 (P&H)(HC)

S. 276C : Offences and prosecutions-Wilful attempt to evade tax-Penalty deleted-No concealment of income-Prosecution could not continue. [S. 277] 2955

Allowing the petition the Court held that the respondent prosecuted the petitioners for the offences under sections 276C(1) and 277 of the Income-tax Act, 1961, for the assessment year 2013-14, alleging that the assessee had not explained the source of income for incurring cash expenses of Rs. 1,19,72,476. In penalty proceedings the Tribunal by its order found that there was no evidence that the assessee had made any cash payment which was unaccounted and the additions made by the Department were merely based on estimate and not based on any material records, and therefore deleted

the penalty. A criminal prosecution on the same set of facts was not maintainable and was unsustainable and the same is quashed. (AY. 2013-14)(SJ)
TVH Energy Resources Pvt. Ltd. v. ACIT [2023] 157 taxmann.com 590 ((2024)460 ITR 433 (Mad)(HC)

2956 **S. 276CC : Offences and prosecutions-Failure to furnish return of income-Eligibility to file declaration under scheme-Tax arrears-Not a tax arrear under VVSV Act, 2020-Rejection of application-Prosecution is not valid-SLP of Revenue is dismissed. [S. 139(1)), 153A, Direct Tax Vivad Se Vishwas Act, 2020, S. 2(1(o), Art. 136]**
On writ High Court held that the prosecution against the assessee was under section 276CC of the Income-tax Act, 1961 pertaining to failure to furnish return under section 139(1) or under section 153A of the Act, that such delayed filing of returns could not be construed to be a "tax arrear" within the meaning of section 2(1)(o) of the Direct Tax Vivad se Vishwas Act, 2020, and that therefore, the rejection of the declarations of the assessee filed under the Act could not be sustained and quashed (AY. 2011-12 to 2015-16)
PCIT v. VPR Mining Infrastructure Pvt. Ltd(2024) 464 ITR 586 (SC)
Editorial : VPR Mining Infrastructure Pvt. Ltd. v. UOI(2023)21 ITR-OL 491/ 2022 SCC OnLine TS 3438 (Telangana)(HC)

2957 **S. 276CC : Offences and prosecutions-Failure to furnish return of income-Interest is levied-Presumption that office has extended the time for filing of return-No mensrea-Criminal appeal of Revenue is dismissed-Judgement of acquittal is affirmed-Delay in filing income-tax return-Entire tax is deposited. [S. 139, 142, 148, 278E]**
Dismissing the petition of the Revenue the Court held that the assessee explained reasons, in detail, about delay in filing income-tax returns and depositing entire tax amount with penalty subsequently, it showed that assessee had no mens rea to evade payment of tax and, prosecution under section 276CC is rightly quashed by the Court. (AY. 1978-79)
ITO v. Rajendra Prasad Vaish (2024) 471 ITR 179 /161 taxmann.com 711 (Raj)(HC)

2958 **S. 276CC : Offences and prosecutions-Failure to furnish return of income-Subsequent filing of return-Adjudication in assessment proceedings is not relevant for prosecution-Petition to quash the proceeding is dismissed. [S. 139, 153A, 276C, Criminal Procedure code, 1973, S. 468]**
Dismissing the petition, that under section 482 of the Code of Criminal Procedure, 1973, the assessee failed to file his return of income. After inspection, the seized materials showed that the assessee had concealed the income. He was issued notice under section 153A of the Act and filed the income tax return for the assessment year 2012-13 on November 20, 2015 showing his income. He had suppressed and concealed the income in the income-tax return filed by him on April 18, 2013. The Tribunal dropped the penalty proceedings solely on the ground of limitation. There was concealment by the assessee while filing his first return of income for the assessment year 2012-13. The assessee is now facing prosecution under section 276CC of the Act. That apart, the mens

rea of the assessee was clearly established by the respondent. The prosecution under section 276CC is justified. (AY. 2012-13)(SJ)
R. P. Darrmalingam v. ACIT (2024)471 ITR 769 (Mad) (HC)

S. 276CC : Offences and prosecutions-Failure to furnish return of income –No regular assessment completed-Assessee did not fall within meaning and scope of a regular assessment to get protection to proviso (b) to section 276CC-Writ petition to quash the prosecution is dismissed. [S. 279, Art. 226] 2959
Assessee had not filed return of income for relevant assessment year. Assessing Officer filed a complaint under section 276CC against assessee before Chief Metropolitan Magistrate. Assessee filed a writ petition seeking to quash said complaint and relying on proviso (b) to section 276CC submitted that a person shall not be proceeded under section 276CC for his failure to furnish return in due time, if tax payable by him on total income determined on regular assessment did not exceed Rs. 3000. Dismissing the petition the Court held that since in no regular assessment had been framed for year in question, assessee did not fall within meaning and scope of a regular assessment to get protection to proviso (b) to section 276CC. (AY. 2014-15)(SJ)
Ramakrishnan Ramasubramani v. ITO (2024) 301 Taxman 522 (Mad.) (HC)

S. 276CC : Offences and prosecutions-Failure to furnish return of income-Delay in filing return was due to ill health-Dismissal of discharge application of prosecution by Special Judge is quashed. [S. 139(1), Criminal Procedure Code, S. 245] 2960
Failure to file return of income prosecution was launched. The made an application before the Competent Court to quash the proceedings on the ground that delay in filing of return was on account of his ill health and was not wilful intentional. Special Judge rejected the application. On appeal to High Court, high Court allowed the petition and order of Special Judge rejecting discharge application is quashed. (AY. 2009-10)(SJ)
Ravi Prakash Khetan v. UOI (2024) 336 CTR 829 (Pat) (HC)

S. 276CC : Offence and prosecution-Failure to furnish return of income-Assessment order and penalty order is set aside-The criminal proceedings pending against the assessee were liable to be quashed. [S. 132, 139, 153A, 271F, 276(2), 27C(1), Code of Criminal Procedure 1973, S 190(1)(1), 200] 2961
In the course of search, certain incriminating documents were found and seized. The return of income was filed and the assessment with certain additions were completed u/s 153A and accordingly demand of tax, interest, etc. was raised. The Revenue simultaneously initiated the prosecution u/s 200 and 190(1)(1) of Cr. PC for the offense u/s 276C(2) r. w. s. 153A and also initiated the prosecution for the offences u/s 276CC. The Court found that the entire prosecution initiated is in pursuance to the order of assessment and penalty u/s 143(3) r. w. s. 153A and when the order of assessment itself is set aside, the initiation of prosecution cannot be sustained till the fresh assessment order passed. The complaints quashed. (AY. 2009-10 too 2015-16) (SJ)
S. Arputharaj v. DCIT (2023) 156 taxmann.com 572 / (2024) 296 Taxman 291 / 461 ITR 450 (Mad)(HC)

2962 **S. 276CC : Offence and prosecution-Failure to furnish return of income-Penalty deleted-There was no penalty or assessment because of subsequent orders passed by the competent authority, entire criminal proceedings against assessee were to be quashed. [S. 139 279]**

The AO issued a show-cause notice u/s. 276CC for initiation of prosecution proceedings for non-filing of return of income in time. The assessee took a plea that since the office of the Director General had not given him a copy of the documents seized during the search and seizure operation in his business premises, he was unable to furnish the return. However, the authorized representative had already collected the original and photocopy of the documents seized but still, the petitioner had not filed returns of income. The Commissioner gave his opinion that the assessee had failed to comply with the notices of the Assessing Officer without assigning any reasons and had also failed to file the return of income and, thus, there was a wilful omission on the part of the assessee in filing returns of his income and, as such, accorded sanction u/s. 279 for launching prosecution u/s. 276CC for not filing returns of income without giving any reasonable cause and non-compliance with the notices of the AO. The High Court held that as the Assessee submitted for the block assessment period, the refund was found to be due to the assessee and refunds were already adjusted against the outstanding demand of the assessee. When there was no demand, filing of prosecution itself was bad in law and to allow to continue proceeding would amount to abuse of the process of law, hence, not justified. Where there was no penalty or assessment against the assessee, orders passed by the competent authority, entire criminal proceedings against the assessee were to be quashed. (AY. 2005-06 to 2009-10, 2010-11)

Gunwant Singh Saluja v. State of Jharkhand (2024) 296 Taxman 302 / 338 CTR 232 (Jharkhand)(HC)

2963 **S. 276CC : Offences and prosecutions-Failure to furnish return of income-Tax payable reduced by advance tax paid and tax deducted at source did not exceed Rs. 3,000, initiation of prosecution under section 276CC was not sustainable and liable to be quashed. [S. 139]**

Court held that as per proviso (ii)(b) to section 276CC if tax payable determined by regular assessment has reduced by advance tax paid and tax deducted at source does not exceed Rs. 3,000, such an assessee shall not be prosecuted for not furnishing return under section 139(1) of the Act. Court held that since petitioner had paid advance tax, TDS, TCS, self-assessment tax, and tax payable by him did not exceed a sum of Rs. 3,000, initiation of prosecution under section 276CC was not sustainable and liable to be quashed. (AY. 2013-14)

Manav Menon v. Dy. CIT(2024) 296 Taxman 275/463 ITR 752 (Mad(HC)

S. 277 : Offences and prosecutions-False statement-Verification-Prosecution was launched two years prior to date of filing of application before Settlement Commission-Pending of prosecution was not brought to the notice of Settlement Commission-Provision of section 245I is not applicable-Proceedings cannot be quashed-SLP of assessee is dismissed. [S. 245C, 245I, Art. 136] 2964

Assessing Officer initiated prosecution against assessee for offence under section 277. Assessee filed an application before Settlement Commission under section 245C and disclosed additional income and paid tax. Settlement Commission granted immunity from prosecution. However, assessee filed petition to quash proceedings initiated against it under section 277. Dismissing the petition the Court held that prosecution proceedings under Income-tax Act were launched two years back and factum of pending prosecution was not brought to notice of Settlement Commission. Assessee concealed fact of such pending prosecution for offence under section 277 and obtained immunity in respect of prosecution and same was not brought to knowledge of Settlement Commission. High Court also held that since prosecution was initiated two years before date of filing settlement application, provisions under section 245-I was not applicable and, thus, prosecution proceedings against assessee could not be quashed. SLP filed by assessee against said order is dismissed.

S. S. Hyderabad Biriyani (P.) Ltd v. Dy. DIT (Inv) (2024) 298 Taxman 198/ 160 taxmann.com 418/465 ITR 410 (SC)

Editorial : S. S. Hyderabad Biriyani (P.) Ltd v. Dy. DIT (Inv) (2024) 160 taxmann.com 417 (Mad)(HC)

S. 279 : Offences and prosecutions-Sanction-Chief Commissioner-Commissioner-Offences and prosecutions-Failure to pay to the credit tax deducted at source-Sanction for prosecution-Reasonable cause-Failure to deposit tax deducted at source due to prevalence of pandemic-Reasonable cause shown for failure-Sufficient cause-Assessee depositing tax deducted at source in phased manner with interest though after delay-Prosecution orders set aside-Order of High Court is affirmed-SLP of Revenue is dismissed. [S. 2(35), 276B, 278AA, 278B, 279, Art. 136] 2965

Allowing the revision petition, that the assessee and its principal officer had deposited the entire tax deducted at source with interest for the delayed deposit before the time of consideration of the matter as to launching of the prosecution under section 279(1) of the 1961 Act. The tax deducted at source with interest had been accepted and gone to the State exchequer when by then no loss to the Revenue stood to be viewed. The assessee and its principal officer in their show-cause had described all the difficulties which they had faced during the prevalence of the covid-19 situation. The real estate sector heavily faced the wrath of the pandemic covid-19 situation and there were serious labour migrations, stoppage of all forms of construction activities and also buying and selling of real estate projects which were all undeniable facts. The point for consideration by the authority was not to cull out the justification for delay in depositing the tax deducted at source but was whether to launch the prosecution. Hence, the order under section 279(1) passed by the Commissioner (TDS) suffered from the vice of non-consideration of the admitted factual settings as to the existence of reasonable cause for the failure to deposit the tax deducted at source and the complaint was vitiated since the failure was on account of the reasonable cause of the prevalence of covid-19 pandemic. The order

of sanction having been passed without due application of mind and in a mechanical manner and putting the blame upon the assessee and its principal officer for not filing any exemption or relaxation notifications or circulars stood vitiated. Hence, the trial court ought not to have taken cognizance of the offences under sections 276B, 2(35) and 278B when even the latter two were no penal provisions and its orders were bad in law and, therefore, set aside. SLP of Revenue is dismissed. (AY. 2021-22)

UOI v. D. N. Homes (P.) Ltd. (2024) 300 Taxman 98/ 469 ITR 2 (SC)

Editorial : D. N. Homes (P.) Ltd v. UOI (2023) 156 taxmann.com 169/ 459 ITR 211 /335 CTR 942 (Orissa)(HC)

2966 **S. 279 : Offences and prosecutions-Sanction-Chief Commissioner-Commissioner-Compounding of offences-Application-Limitation-Application can be filed either before or subsequent to launching of prosecution-Circular issued by Central Board Of Direct Taxes stipulating limitation period of 12 months-Contrary to legislative intent of provision-Relevant clause of Circular struck down-Matter remitted to decide application on the merits. [S. 119(1), 279(2), Art. 226]**

On writ the Court held that the power of the Central Board of Direct Taxes under section 119(1) of the Income-tax Act, 1961 to issue circulars, directions and instructions should not be exercised beyond the scope of the Act but within the scope of the Act. The Central Board of Direct Taxes is not empowered to fix the time limit for filing the application for compounding of offences under section 279, which is contrary to the provisions of section 279(2) in terms of which the assessee can file the application for compounding of offences either before or subsequent to the launching of the prosecution. The Explanation to section 279 which empowers the Central Board of Direct Taxes to issue circulars, is only for the purpose of implementation of the provisions of the Act with regard to the compounding of offences and not for the purpose of fixing the time limit for filing the application for compounding of offences. (AY. 2013-14)

Jay shree v. CBDT (2024) 464 ITR 81 (Mad)(HC)

2967 **S. 279 : Offences and prosecutions-Sanction-Chief Commissioner-Delay in filing of return-After receiving the summons filed compounding application-Application rejected on grounds of exceeding time limit specified in guidelines issued by Central Board of Direct Taxes on 14-6-2019-On writ the Court held that order was to be quashed and compounding application of assessee was directed to be considered and disposed of on merits. [S. 139, Art. 226]**

Assessee, a subsidiary of a Singapore based company faced a delay in filing its income tax return due to a disagreement between auditors in India and Singapore. It eventually filed its return on 14-5-2018. Prosecution was initiated based on a complaint dated 3-1-2019, leading to summons being issued on 9-11-2021. On 19-5-2022, after receiving summons, assessee filed a compounding application which was rejected on grounds of exceeding time limit specified in guidelines issued by Central Board of Direct Taxes on 14-6-2019. Which was rejected. On writ the Court held that neither sub-section (2) nor any of other sub-sections of section 279 prescribe a period of limitation with regard to compounding of offences. Even otherwise complaint was

lodged on 3-1-2019 a period of about fifteen months lapsed between date of complaint and onset of Covid-19 pandemic and if period excluded under orders of Supreme Court, i. e. period running from 15-3-2020 to 28-2-2022, was excluded compounding application filed on 19-5-2022 would be within period prescribed in guidelines of Central Board of Direct Taxes. Order rejecting the application is quashed and compounding application of assessee was directed to be considered and disposed of on merits. CBDT guidelines dated 14-6-2019 (SJ)
Photon Kathaas Production (P.) Ltd. v. DGIT (Inv) (2024) 297 Taxman 311 /464 ITR 89 (Mad.)(HC)

S. 281 : Certain transfers to be void – Recovery of tax – Priority of debts – Secured creditors v. Crown debt - The orders of attachment passed by the Tax Recovery Officer being subsequent to the mortgage created in favour of the secured creditors set aside. [S. 226, Recovery Of Debts And Bankruptcy Act, 1993, 31B, Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002, S. 26E, Art. 226] 2968
The Division Bench held that the Income-tax Act, 1961 does not create a charge on the property of a defaulting assessee, and section 281 merely declares certain transfers void but does not create a statutory charge in favour of the Department. Crown debt has priority only over unsecured debts and not over secured creditors in the absence of an express provision. Sections 26E of the SARFAESI Act, 2002 and 31B of the Recovery of Debts and Bankruptcy Act, 1993 contain overriding non obstante clauses that accord primacy to secured creditors over all other debts, including government dues. Applying purposive interpretation, Parliament's intention to protect the rights of secured creditors prevails. Consequently, the attachment orders of the Tax Recovery Officer, being subsequent to the mortgage in favour of secured creditors, were invalid and set aside. (AY. 2009-10 to 2011-12)
State Bank of India v. Tax Recovery Officer (2024) 463 ITR 244 (Mad)(HC)
Editorial :Reversing the single judge order in Janata Sahakari Bank Ltd v. TRO (2021) 18 ITR-OL 434 (Mad)(HC))

S. 281 : Certain transfers to be void-Priority of debt-Secured creditor-Mortgage of land and construction-The omission of dates of proceedings and mortgage of property in order to demonstrate proceedings initiated before mortgage of property-Finding on date of initiation of proceeding prior to date of creation of mortgage not found in order-Order vague-Order set aside. [ITR. 83 Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002-Recovery of Debts and Bankruptcy Act, 1993, Art. 226] 2969
Allowing the petition the Court held that on dates of initiation of proceedings and creation of the mortgage, to demonstrate that the mortgage was created after initiation of the proceeding. The Tax Recovery Officer has power under rule 83 in the Second Schedule empowering him to take evidence exercising power of a civil court. But in the exercise of the power, there must be laid evidence to substantiate the declaration of the mortgage being void. So far as rule 86 was concerned, the Department had not argued that the order was not one, which was conclusive in declaring the mortgage void. No

finding that the date of initiation of the proceeding was before the date of creation of the mortgage could be located in the order. The order was bad for being vague.
Bajaj Finance Ltd. v. TRO [2024] 461 ITR 397 (Orissa)(HC)

2970 **S. 281B : Provisional attachment-Protect the interest of the Revenue-Properties are mortgaged-Working capital-Order is passed directing the Revenue to lift the attachment on bank account to enable the assessee to avail the working capital facilities etc. from the banks. [Art. 226]**

On writ against the provisional attachment the Court held that the first charge holders of the properties are the bankers and the IT Department is only the second charge holders of the assessee's properties. Therefore, the first charge holders of the assessee's properties, being the bankers, the assessee has to first satisfy the bankers, for availing loan facility and on the bankers are satisfied they would come forward to lend loan facility the assessees. The assessees have earned good reputation and credibility amongst the general public, based on which, the bankers have come forward to extend the loan facility and this is a continuous arrangements entered into between the bankers and the assessees, for the sake of running the business smoothly, and when the bank, having extended working capital loan facility to the assessees, and they will monitor the same so as to protect their interest. The question of non-repayment would arise due to deficit in service of working capital loan extended to the assessees. Therefore, the Department could have enabled the assessee to get their working capital loans extended by the bankers, and thereafter, monitor the assessee, whether such loan is being utilized by the assessee for the purpose, for which, such additional loan is extended, and by doing so, the interest of the Revenue, is not going to be affected any away, rather, it would promote much financial gain, and thereby, the interest of the Revenue would also be safeguarded. Therefore, the Department ought to have acted in such a way, in order to protect the interest of the Revenue. On the facts the Department has issued the attachment orders and the same got lapsed on 27th Aug., 2022, 22nd Feb., 2023 and 16th Aug., 2023 respectively. Finally, for the fourth time, the respondent Department has issued the provisional attachment orders dt. 16th Aug., 2023, and the reasons assigned is that to protect the interest of the Revenue. High Court passed the order directing the Revenue to lift the attachment on bank account to enable the assessee to avail the working capital facilities etc. from the banks. (SJ)
Rathna Akshaya Estates (P) Ltd. v. PCIT (2024) 340 CTR 159 / 238 DTR 32 (Mad)(HC)
Saravana Selvarathnam Retail (P) Ltd. v. PCIT 2024) 340 CTR 159 / 238 DTR 32 (Mad) (HC)

Black Money (Undisclosed Foreign Income And Assets) And Imposition of Tax Act, 2015

S. 2(11): Undisclosed asset located outside India-Assessment-Black Money-Income from undisclosed sources-Investments in UK-based trusts-Only source of information Department's common reporting standard information showing account balances in trusts and recitals in trust deed-Investment in trust represented immovable property sourced through bank loan-Balance in other trust owned up and explained by assessee's Non-resident son-Addition is deleted. [10(3), IT Act, S. 139, Explan 4, The Foreign Exchange Management Act, 1999, S. 16] 2971

The assessee was a resident senior citizen aged about 100 years and his son shri Balaji Ramamoorthy was a citizen of the United States of America. For the assessment year 2016-17, the Assessing Officer issued notice under section 10(1) of the Black Money (Undisclosed Foreign Income and Assets) and Imposition of Tax Act, 2015, calling for bank statements relating to investments of large sums in two United Kingdom-based trusts, Windsor Trust and Dalham Trust, to explain the source of funds for making the investments. Not accepting the assessee's explanation for the initial corpus invested in the trusts, the Assessing Officer made additions towards undisclosed investment. The Commissioner (Appeals) sustained the additions. On appeal the Tribunal held that the sole basis for the Assessing Officer to arrive at the conclusion was the Common Reporting Standard information in the Department's Insight portal showing the account balances in the two trusts, on the basis of which he concluded that the assessee being a settlor of the trust became the principal beneficiary and, consequently, the investment in the trust was undisclosed income of the assessee under section 10(3) of the Black Money (Undisclosed Foreign Income and Assets) and Imposition of Tax Act, 2015. The Assessing Officer's findings was not tenable for the simple reason that except for the Common Reporting Standard information, he did not have any other evidence to allege that the assessee had made contribution to the trusts. The Assessing Officer neither had the assessee's bank statement to allege that the assessee had made outward remittance of funds nor could he prove that the assessee was deriving any income from the trusts outside India. Investment in trust represented immovable property sourced through bank loan. Balance in other trust owned up and explained by assessee's Non-resident son. Accordingly the addition is deleted. (AY. 2016-17)

Narayanaswamy Ramamoorthy v. Dy. CIT (Inv) (2024)113 ITR 18 /228 TTJ 769/ 240 DTR 89 (Chennai)(Trib)

S. 4 : Scope of total undisclosed foreign income and assets-Notice-Sought 45 days to provide bank statements from a closed DBS Bank account-Request is held to be reasonable-High Court directed the CIT(A)) to consider request of assessee. [S. 250, Art. 226] 2972

An order dated 23. 03. 2023 was issued against the assessee under the Black Money (Undisclosed Foreign Income and Assets) and the imposition of Income-tax Act, 2015. Such order was carried in appeal by the assessee before the Commissioner (Appeals). The assessee was called upon to provide documents, including bank statements relating

to the assessee's account with DBS Bank. Assessee, sought 45 days to provide bank statements from a closed DBS Bank account. Such request was made by assessee because his son had travelled to Singapore to obtain statement, which was taking time due to account being closed. On writ the Court held that reason set out by assessee appeared to be reasonable, consequently, Commissioner (Appeals) was directed to consider and grant request for 45 days' time to provide all documents and information.
Unnamalai Thiagarajan v. CIT (Appeals) (2024) 299 Taxman 495 (Mad.)(HC)

2973 **S. 10 : Assessment-Non-Resident Indian living in Dubai-Search-Undisclosed foreign assets-Look Out Circular (LOC)-Mere fact that information sought through Foreign Tax and Tax Research from other jurisdictions such as UAE was still awaited could not be reason to keep LOC against assessee pending to curtail his fundamental rights and thus, LOC is quashed. [IT Act, 132, Art. 226]**

Assessee was a non-resident Indian living in Dubai. Search and seizure operations under section 132 were undertaken at premises of group of hotels which included assessee along with other family members. It was alleged that assessee had indulged in evading disclosure of a large amount of undisclosed foreign assets/income in offshore jurisdictions and had indulged in diversion of unaccounted assets/income with purpose of circumventing jurisdiction of Indian revenue authorities. Consequently, Look Out Circular (LOC) was issued against assessee. On writ, assessee had challenged said LOC on the ground that last summon was issued to assessee two years back and since then he had not been called by authorities. Court held that LOC could not be permitted to continue for such a long period without there being any cogent and valid reason. Since assessee had complied with summons and had cooperated with ongoing investigations against him by revenue and furthermore in absence of any material which indicated that assessee was likely to be called for investigation in near future, LOC issued against him was to be quashed. Mere fact that information sought through Foreign Tax and Tax Research from other jurisdictions such as UAE was still awaited could not be reason to keep LOC against assessee pending to curtail his fundamental rights and thus, LOC is quashed. (AY. 2020-21)
Jayant Nanda v. UOI (2024) 298 Taxman 276/470 ITR 582 (Delhi)(HC)

2974 **S. 10(1) : Undisclosed Foreign Assets - Assets acquired prior to commencement of the Act-Proceedings under Black Money Act and investigation by Income-tax Department-Look out circular-Co-operating with the investigation-Allowed to travel out side India subject to conditions specified. [S. 72(c), ITA, S. 153C]**

Proceedings under Black Money Act and investigation by Income-tax Department were currently continuing against assessee. Look out Circular was also issued against assessee in context of proceedings pending under Black Money Act. Assessee filed writ petition seeking permission to travel for two business meetings and for meeting his daughter in USA. Court held that in view of cooperation which had been extended by assessee from time-to-time in terms of participation in investigation and fact that assessee was allowed to travel abroad thrice earlier, he was to be granted permission to travel abroad, subject to Certain conditions.
Ratul Puri v. UOI (2023) 470 ITR 306 /151 taxmann.com 149 (Delhi) (HC)

S. 10(1) : Undisclosed Foreign Assets-Evasion of tax-Look-out circular banning travel-Pendency of appeal-The look-out circular shall stand modified to an intimation in terms of clause 6(I) of the Office Memorandum of 2021, which states that in cases where there is no cognizable offence under the Indian Penal Code and other penal laws ; the look-out circular subject cannot be detained or arrested or prevented from leaving the country-The originating agency can only request that they be informed about the arrival and departure of the subject in such cases. [S. 10(3), 41, IT Act, 131(IA), 133A, 153A, Art. 226] 2975

Appeal against assessment order under 2015 Act is pending before the CIT(A). Department issued Look-out circular banning travel. The appeal is pending before the CIT(A). On writ the Court held that request for travel not a case of travel detrimental to economic interests of country. Court modified the look-Out circular banning travel directed the petitioner to give intimation regarding arrival and departure of assessee to concerned authorities. Modification subject to stringent conditions as to properties being offered as security and undertaking by assessee to be bound by orders. (SJ)

Prateek Chitkara v. UOI (2024) 460 ITR 673 (Delhi)(HC)

S. 41 : Penalty in relation to undisclosed foreign income and asset-Where Assessing Officer issued on assessee a show cause notice under section 41 of Black Money Act proposing to levy penalty and without taking into account assessee's reply levied penalty, impugned order deserved to be set aside with a direction to Assessing Officer to conduct a de novo exercise. [S. 46(4), 246A, Art. 226] 2976

Assessing Officer issued on assessee a show cause notice under section 41 proposing to levy penalty. Assessee filed reply stating that penalty proceedings should be kept in abeyance having regard to fact that appeal preferred on quantum levy was pending before Commissioner (Appeals). Assessing Officer without taking into account reply levied penalty. Penalty order is set aside with a direction to Assessing Officer to conduct a de novo exercise. (AY. 2019-20)

Prateek Chitkara v. Jt. CIT (2023) 470 ITR 87 /151 taxmann.com 315 (Delhi) (HC)

S. 43 : Penalty for failure to furnish return of income an information or furnish inaugurate particulars of an asset (Including financial interest in any entity) outside India –Failure to report foreign assets in the return-Employees Stock option-Tax is deducted at source-Failure to disclose-Income was disclosed-Penalty provision should not be invoked for punishing a technical /venial /bonafide breach of any statutory obligation-Bonafide actions of the tax payers must be excluded from the application of provisions of this stringent legislation-Levy of penalty is not valid. [S. 2(11) IT Act, S. 17(2)] 2977

The assessee was resident of India during the years under consideration. It is alleged that assessee had foreign assets being investments with Equatex UK Ltd. (United Kingdom of Great Britain and Northern Ireland) having account No. 1660701 but was not reported in schedule FA (Foreign Assets) of the income tax return filed for the years under consideration, as revealed in the enquiries conducted by the investigation Wing. According to the Ld. Assessing Officer, failure on the part of the assessee to make the said reporting attracted penalty of ₹ 10 lakhs under section 43 of the Act. Ld. Assessing Officer had issued a show cause notice seeking explanation from the assessee to this effect which was replied upon. Assessee submitted that he was an employee

of Vodafone M-Pesa Ltd and was granted stock options that is ESOPs by the company as part of his employment. Assessee received equity shares of Vodafone Group PLC (foreign listed company of the Vodafone group) which were valued at ₹ 18,99,873/-by the employer for assessment year 2018-19. These shares were held in an online broking account bearing user ID: 1528635 which was opened by the employer itself to facilitate the allotment of ESOPs. These ESOPs were considered as perquisites in the hands of the assessee which were valued and disclosed as per the provisions of the Income-tax Act, 1961 (the IT Act) in Form No. 12BA issued by the employer. This perquisite was included in annexure to Form 16-Part B as per section 17(2) of the IT Act. The employer had deducted appropriate and full amount of tax at source (TDS) on the value this of perquisite. According to the assessee, since the entire amount of ESOP is fully taxed by way of TDS and which has been disclosed and offered to take under the head income from salary in his return form it does not fall within the definition of 'undisclosed asset located outside India' as per section 2(11) of the Act. A reference was also made to definition of assessee under section 2(2) of the Act. The AO levied the penalty. CIT(A) deleted the penalty. On appeal the assessee contend that, He has fully disclosed the income earned in the form of ESOP. (shares of a foreign company) which itself is the foreign asset, No further tax is payable on such income, This asset is generated out of the income, which is fully disclosed and taxed in India in the same assessment year, he has disclosed, beyond doubt, the source of investment in such asset. He has furnished the relevant information and particulars to the extent required to be submitted in the tax return, It is not a case of malafide intention of not disclosing either the income or the asset as the preamble to the said Act to understand the discretionary power vested with the Assessing Officer for imposition of penalty vis-à-vis object sought to be achieved keeping in mind the legislative intent. The purpose of reporting requirement of foreign assets/income in Schedule FA of the Income tax return is for tracking and monitoring the investments held abroad by the residents of India. Preamble to the Act describes its objective to deal with problem of black money, i. e., undisclosed foreign income and assets. The said Act must not be invoked for punishing a technical /venial /bonafide breach of any statutory obligation and therefore bonafide actions of the tax payers must be excluded from the application of provisions of this stringent legislation. In this regard, we draw our force from the decision of Hon'ble Supreme Court in the case of *Hindustan Steel Ltd. v. State of Orissa (1972) 83 ITR 26(SC). Deleted the penalty. Referred Shobha Harish Thawani v. JCIT in BMA Nos. 01 to 03/Mum/2023, dated 09. 08. 2023.* (BMA. No. 36 to 40 /Mum/2024 dt. 27-11-2024)(AY. 2017-18,2018-19, 2019-20, 2020-21) *ACIT v. Rohit Krishna (Mum)(Trib) www.itatonline.org.*

2978 **S. 50 : Punishment for failure to furnish in return of income, any information about an asset (including financial interest in any entity) located outside India-Punishment for false statement in verification-Assets acquired prior to the coming into force of the Black Money Act-In the criminal petition, there was no challenge to the validity of S. 72(c)-Observations of the High Court in para 15 regarding application of Art. 20 of the Constitution of India are stayed till further order. [S. 2(11), 2(12), 10, 52, 59, 72(C), IT Act, 131, Criminal Procedure Code, 1973, S. 200, 256, Art. 20]**

Assessees were directors in companies, Glearing Snow World wide (GS) and Oriental Success Universal Corporation Ltd (OS) which were incorporated as British Virgin

Island(BVI) companies in Singapore on 17-3-2008 and 12-5-2009. Thereafter, OS-company opened a bank account in Singapore bank and certain amount was credited in said corporations accounts. After closure of financial year, bank account was closed and subsequently, both companies were struck off at BVI. Revenue took recourse to section 72. Revenue registered a complaint against assessee invoking section 200 of Cr. P. C on ground that assessee had denied their investments, interests, beneficial ownership of entities and beneficial ownership of bank account maintained in Singapore in their statements recorded under section 131 of IT Act, 1961 on 10-5-2015 and 17-3-2017. High Court held that since all facts that became offences were alleged to have happened five years prior to BMI Act coming into force and law, as on date alleged, was not law of such disclosure of assessment, non-disclosure of an assessment of tax return for year 2007-08 or 2009-10 could not be used to criminally prosecute assessees. High Court further held that since prosecution initiated could not pass muster under article 20 of Constitution of India, criminal law could not be set into motion against assessees. On SLP it was noted that in criminal petition, there was no challenge to validity of section 72(c). Accordingly SLP was to be granted against order of High Court. Observations of the High Court in para 15 of the judgment, the High Court has observed thus:

"15. xxx

xxx Therefore, the criminal law cannot be set into motion against the petitioners in the aforesaid facts of the case, as it cannot pass muster of Article 20 of the Constitution of India. A caveat, this Court is considering the criminal liability fastened upon the petitioners by the prosecution including under Section 72(c) of the Act and the consideration has led to an unmistakable conclusion that it falls foul of Article 20 of the Constitution of India. The Special enactment is a statute. Article 20 comes under Chapter III of the Constitution of India, a fundamental right. Constitution of India is not a statute. It is the fountain head of all statutes including the special statute. Therefore, the rigour of any provision of the Act should pass muster of Article 20 of the Constitution of India and it fails to pass such muster in the case at hand and the failure leads to obliteration of the crime against the petitioners. " The aforesaid part of the impugned order will remain stayed. (AY. 2019-20)

IT Department v. Dhanashree Ravindra Pandit (2024) 340 CTR 411 / 241 DTR 65 / 300 Taxman 587 (SC)

Editorial : Dhanashree Ravindra Pandit (Smt.) v. IT Department (2024) 340 CTR 412 / 241 DTR 66(Karn)(HC), Certain observations is stayed.)

S. 50 : Punishment for failure to furnish in return of income, any information about an asset (Including financial interest in any entity) located outside India-Punishment for wilful attempt to evade tax-Anticipatory Bail [S. 3(1), 10, 51, ITAct, 132,Criminal Procedure Code, 1973, 438 2979

Assessee is the sole director of his company. Authorized Officer conducted a search under section 132 on company and seized certain documents, which revealed that company had foreign bank account in Singapore from assessment years 2009-10 to 2014-15 and assessee was signatory of bank account and company had not disclosed foreign bank account in income tax returns pertaining to assessment years 2009-10 to 2014-15.competent Authority filed a complaint against assessee before Chief Judicial

Magistrate under sections 50, 51(1) and 51(2) of Black Money (Undisclosed Foreign Income and Assets) and Imposition of Tax Act, 2015. Assessee filed an application before High Court for grant of anticipatory bail. Court held that in view of submissions of assessee that Black Money Act was not applicable in assessment years 2009-10 to 2014-15 because it came into force and was applicable after 1-4-2016 and there was no need of his custodial interrogation and he was ready to co-operate with trial and furnish adequate surety, it was to be directed that in event of arrest, assessee be released on bail on furnishing a personal bond in sum of Rs. 5 lakhs with one solvent surety of like amount. Court directed the assessee to co-operate with the Income-tax Department in investigation, inquiry or proceedings conducted by the Department, if required. He will further abide by the following conditions:

(a) assessee shall make himself available for interrogation by the Income-tax Department as and when required;
(b) assessee shall not, directly or indirectly, make any inducement, threat or promise to complainant or witnesses;
(c) assessee will not leave India without the permission of Trail Court and surrender his passport before the Trial Court.
(d) assessee shall not commit similar offence, of which, he is accused or suspected. (SJ)

Sanjay Vijay Shinde v. Directorate GIT (2024) 300 Taxman 567 (MP)(HC)

2980 **S. 50 : Offences and Prosecution-Failure to furnish foreign assets and financial interest in foreign entity-Wilful evasion of tax - Act of 2015 was not in existence at relevant point of time-Non-disclosure in tax returns for year 2007-08 or 2009-10 cannot be used to prosecute under law coming into effect thereafter-Criminal Proceedings quashed-A legal fiction or a deeming fiction should not be extended beyond the purpose of the Act for which it is created or beyond the language deployed in the enactment. [S. 52, 72(c), Art. 20, 226]**

Allowing the criminal petitions, that at the relevant point in time, when the amounts were alleged to have been deposited by the assessees in the bank in Singapore in the year 2009-10, the Black Money (Undisclosed Foreign Income and Assets) and Imposition of tax Act, 2015 was not in existence and came into effect only on July 1, 2015. Therefore, all the facts had happened five years prior to the Act itself coming into force. What was given effect to under section 72(c) was a deeming section which created a criminal liability. It was a matter of record that all the facts that became the offences were alleged to have happened five years prior to the 2015 Act coming into force. A special enactment is a statute, whereas the Constitution of India is not a statute, but the fountain head of all the statutes including the special statute. Article 20 comes under Chapter III of the Constitution of India, a fundamental right, which makes it a fundamental right to a person who would be convicted of an offence except for violation of law in force at the time of commission of the act charged as an offence, not to be subjected to a penalty greater than that which might have been inflicted under the law in force. The prosecution initiated against these assessees did not and could not pass constitutional muster under article 20 of the Constitution of India. Therefore, the 2015 Act failed to pass muster of article 20 of the Constitution of India. Non-disclosure in

an assessment of the tax return for the year 2007-08 or 2009-10 could not be used to prosecute the assessees, under an Act that had come into force in the year 2015. The law, as on the date alleged, was not the law of such disclosure of assessment. Therefore, on the facts, the criminal law could not be set into motion against the assessees. Therefore, the criminal proceedings pending before the Additional Judicial Magistrate were quashed. (AY. 2019-20)(SJ)

Dhanashree Ravindra Pandit (Smt.) v. ITD (2024)466 ITR 1/163 taxmann.com 695 /340 CTR 412 / 241 DTR 66 (Karn)(HC)

Mangal Arvind Gogte (Smt) v. ITD (2024)466 ITR 1/163 taxmann.com 695 /340 CTR 412 / 241 DTR 66 (Karn)(HC)

Arvind Balkrishna Gogte v. ITD (2024)466 ITR 1/163 taxmann.com 695 /340 CTR 412 / 241 DTR 66 (Karn)(HC)

Madhav Arvind Gogtae v. ITD (2024)466 ITR 1/163 taxmann.com 695 /340 CTR 412 / 241 DTR 66 (Karn)(HC)

S. 50 : Punishment for failure to furnish in return of income, any information about an asset (including financial interest in any entity) located outside India –Appearance of petitioner is dispensed with certain conditions. [Criminal Procedure Code, 1973, S. 205] 2981

Search and seizure revealed two bank accounts in Hong Kong of the assesee and her husband that were disclosed in the assessment years. Charge of section 50 of the black money act on the assessee was framed. Assessee filed application u/s 205 of Cr. P. C before trial court for exempting her from attending trial. Trial court rejected the application. The Calcutta High Court observed that from the impugned order it is found that the learned Magistrate has not considered whether any useful purpose could be served by requiring the personal attendance of the accused or whether the progress of the trial is likely to be hampered on account of her absence. Since the nature of complaint precisely is based on documents, I am of the opinion that personal appearance of the petitioner may be dispensed with subject to certain conditions as follows:-

(i) That the accused petitioner shall submit a written undertaking before the learned Trial Court that she will not challenge her identity and the trial will proceed in her absence but in presence of her advocate-on-record.

(ii) The accused-petitioner shall also give written undertaking before the learned Trial Court that she will appear as and when required by the learned Court.

(iii) The petitioner shall not leave the country without the prior permission of the learned trial Court. Hence, the application was allowed. (AY. 2012-13, 2014-15)

Prerna Chopra v. UOI. (2023) 155 taxmann.com 430/ (2024) 296 Taxman 269 /460 ITR 664 (Cal)(HC)

Direct Tax Vivad Se Vishwas Act, 2020

2982 **S. 2(1) : Legacy Dispute Resolution-Deposit of tax arrears-Dropping of cheque in the drop box-Delay of three days in delay of deposit of cheque due to circumstances beyond control. [IT Act, 119, S. 3, 4, Art. 226]]**

The assessee filed his declaration as required under section 3 of the 2020 Act before the designated authority before the last date, i. e., June 5, 2020 and on receiving the declaration of the assessee, the designated authority had also issued a certificate as required under section 5 of the 2020 Act, on November 9, 2020 after adjusting the tax paid by the assessee and also informed him that the tax payable by him was about Rs. 18,67,137 before December 31, 2020. It was also mentioned in the certificate that after December 31, 2020 the assessee would be liable to pay the arrears of tax of Rs. 20,84,351. The last date for depositing the arrears of tax was extended from time to time and lastly by notification dated June 25, 2021 ([2021] 435 ITR (St.) 25) till October 31, 2021. But the last date, i. e., October 31, 2021, was a Sunday ; therefore, the assessee dropped the cheque for Rs. 8,67,137 in the drop box of the bank, after adjusting Rs. 10 lakhs already deposited by him on February 4, 2019. The cheque was cleared on November 3, 2021 and duly deposited in the account of the Income-tax Department. The delay of three days occurred because on November 1, 2021, the assessee met with an accident and suffered a knee injury, and, therefore, he could not approach the bank to clear the cheque or credit the amount on November 1, 2021. Owing to this delay of three days, the Income-tax Department did not accept the amount deposited by the assessee under the "Vivad se Vishwas" Scheme. Thereafter, the assessee's application for condonation of delay of three days was also rejected by the Chairman of the Central Board of Direct Tax by order dated August 25, 2022. On a writ petition, allowing the petition the Court held that the fact of dropping of cheque in the drop box as well as the accident of the assessee was not disputed by the respondent in the counter affidavit. The delay of three days in depositing the arrears of tax is condoned. Direct Tax Vivad se Vishwas Scheme, 2020 in pursuance of the Direct Tax Vivad se Vishwas Act, 2020 ([2020] 422 ITR (St.) 121). (AY. 2010-11))

Digvendra Pratap Singh v. UOI (2024) 464 ITR 398/ 296 Taxman 460 / 338 CTR 849 / 237 DTR 591 (All)(HC)

2983 **S. 2(1)(a) : Appellant-Amount payable and time of payment-Disputed tax-Filing of declaration and particulars to be furnished-Appeal dismissed by the Commissioner (Appeals)-Time limit for filing an appeal before Income tax Appellate Tribunal is not expired-Eligible to apply under provisions of DTVSV-The revenue is directed to proceed with the application of the assessee in accordance with the provisions of the DTVSV Act and other applicable regulations. [S. 2(1)(a)(ii), 2(1)(j)(B), 4, S. 250, 254(1), Art. 226]**

Aggrieved by the assessment order, the assessee preferred an appeal before the Commissioner (Appeals) which came to be dismissed on the ground of four years delay. This order of Commissioner (Appeals) however, was under challenge before the Tribunal. In the interregnum, on 17-3-2020, the Direct Tax Vivad se Vishwas Act, 2020 (DTVSV Act) came into force and on 23-12-2020, the assessee filed Forms 1 and 2 as per the

provisions of the DTVSV Act. The said application was rejected by the revenue on the pretext that as on the specified date, no appeal was pending, hence, the assessee was ineligible to reap the benefits under the DTVSV Act. On writ allowing the petition the Court held that once Commissioner (Appeals) has rejected appeal of assessee whether on merits or on delay aspect, tax demand as reflected in assessment order gets confirmed unless it is set aside or modified by other appellate authority, thus, disputed tax arrears still exist as on specified date and consequently, assessee would be eligible to apply for settlement under DTVSV Act. Assessee's appeal before Commissioner (Appeals) was dismissed on ground of delay and admittedly time limit to avail remedy to appeal against Commissioner (Appeals) order was not exhausted as on specified date, assessee would be eligible to apply under provisions of DTVSV Act. Revenue could not have presupposed that assessee would not succeed in appeal before Tribunal under any circumstances. (AY. 2010-11)

PT Bukaka Teknik Utama v. CIT (IT) (2024) 299 Taxman 156 /338 CTR 156 /471 ITR 629 (Delhi)(HC)

S. 2(1)(a) : Appellant-Declarant-Pendency of appeal-Physically and digital mode-No difference between appeal admitted physical and digital mode-Rejection is not valid. [ITAct, 1961, S. 254(2), Art. 226] 2984

Allowing the petition the Court held that the Vivad se Viswas Act does not make any distinction as to the mode in which the appeal was made as long as it is pending. Once the Tribunal condoned the delay on December 18, 2020, the appeal would be construed as having been instituted on the date it ought to have been lodged. The fresh appeal was filed before the 2020 Act received the assent of the President, i. e., on March 17, 2020. Therefore, the bona fides of the assessee, clearly, could not be doubted. The assessee would not have known that a viable appeal was one which was instituted in digital mode. Undoubtedly, the assessee suffered on account of its lawyer's failure. Therefore, the assessee's appeal was pending on the specified date, i. e., January 31, 2020. The rejection of the declaration was not valid.

Ardent Info Systems Pvt. Ltd. v. PCIT [2023] 152 taxmann.com 496 / (2024)460 ITR 421 (Delhi)(HC)

S. 2(1)(j) : Disputed tax-Rectification-As per clarification issued by CBDT if there was a reduction or increase in income and tax liability of assessee as a result of rectification, disputed tax would be calculated after giving effect to rectification order passed-Revised form 3 is held to be not justified. [S. 2(1)(j), ITAct, 154, Art. 226] 2985

Allowing the petition the Hon'ble Court has held that in DTVSV Act, 2020, if there was a reduction or increase in income and tax liability of assessee as a result of rectification, disputed tax would be calculated after giving effect to said rectification order passed. Issuance of revised form is held to be not sustainable. The rejection order is quashed. Respondents are directed to act in furtherance of the petitioner's declaration by way of form 3 dated January 18, 2021 in accordance with the clarification of the Act. (AY. 2014-15)

Rajpal Lakhmichand Arya v. PCIT (2024) 461 ITR 79 (Bom)(HC)

2986 **S. 2(1)(j) : Disputed tax-Matter remanded by the Tribunal to the Assessing Officer-Bogus purchases-Tax to be computed on the element of Gross Profit in respect of addition made for bogus purchases and not entire purchases added by the AO in original assessment. [S. 2(1)(j)(B), 3, IT Act, S. 68. Art. 226]**

The AO made addition for bogus purchases u/s. 68 of the Act for A. Y. 2011-12. The CIT(A) restricted the addition to 25%. Hence, both Revenue and the assessee filed appeals before the Tribunal which was disposed by order dated 26. 09. 2019 wherein it held that entire addition cannot be made but it should be restricted to the difference between GP on genuine purchases and GP on bogus purchases. For want of details, Tribunal restored the matter to the AO. Both Revenue and the assessee filed further appeals before High Court on 31.02.2021. The assessee filed Form 1 under VVS showing tax liability of Rs. 40,58,100 but certificate was issued for Rs. 1,62,32,404/-by relying on Q. no. 7 of Circular 9 of 2020 dated 22.04.2020. (2020) 422 ITR 131(St) Hence, the assessee filed Writ which was disposed holding that the reliance placed by the Revenue on said Circular was unstainable. Accordingly, the Revenue was directed to compute disputed tax demand by giving effect to the order passed by Tribunal and issue Form 3 within 3 months from date of the order. *Agarwal Industrial Corporations Ltd. v UOI [2023 455 ITR 404 (Bom)(HC)* (AY. 2011-12)

Agarwal Industrial Corporations Ltd. v. UOI (2024) 461 ITR 74 (Bom)(HC)

2987 **S. 3: Amount payable by declarant-Time and manner of payment-Determined tax payable within 15 days of receipt of Form-3-Requirement of paying an additional amount was informed to assessee only by communication dated 1-4-2022, long after extended date of 31-10-2021-Assessee should not have been denied benefits under DTVSV Act. [S. 5, Form No1, Form No 3, Form No 4, Art. 226]**

Assessee filed declaration in Form 1 giving particulars of tax arrears and amounts payable in respect of pending income tax dispute for relevant assessment year. Revenue issued Form 3 determining amounts payable as 14.04 lakhs (if paid on or before 31-3-2021) and Rs. 16.26 lakhs (if paid after 31-3-2021) Accordingly, assessee paid amount of Rs. 14.04 lakhs on 12-10-2021. However, assessee received a communication that her declaration was null and void as there was delay in filing of Form-4 and last date for payment of tax extended upto 31-10-2021 had also lapsed. Thereafter, assessee received another communication rejecting assessee's declaration with new reason that assessee ought to have paid Rs. 16.26 lakhs since such payment was made after 30-9-2021. On writ the assessee contended that in response to revised Form 3 made payment of disputed tax determined within 15 days in Form 4 and also payment made on 12-10-2021 was acknowledged by revenue. Requirement of paying an additional amount was informed to assessee only by communication dated 1-4-2022, long after the extended date of 31-10-2021 had lapsed. Allowing the petition the Court held that fact revenue should have either accepted assessee's payment made within 15 days from receipt of Form 3 or at least informed assessee that she was required to pay an additional amount on or before 31-10-2021. Since assessee determined amount payable under VsV Act correctly but had to struggle to get revenue's determination corrected, communications rejecting assessee's declaration is to be quashed. The Revenue is directed to accept the declaration, subject to making the payment within 21 days. (AY. 2017-18)

Neelam Ajit Phatarpekar (Mrs.) v. ACIT [2024] 163 taxmann.com 335 (Bom)(HC)

S. 3 : Amount payable by declarant-Seventy five per cent. of amount determined under scheme paid-Slight delay in paying balance due to circumstances beyond control-Delay is condoned-Direction issued to the respondent to immediately take necessary steps for issuance of form 5 under the Direct Tax Vivad se Vishwas Act, 2020. [S. 4,5, Art. 226] 2988
The petitioner in order to avail of the benefit of the scheme under the Direct Tax Vivad se Vishwas Act, 2020, was required to make a payment of up till March 31, 2021 and with interest at the rate of 10 per cent. amount of up till October 31, 2021. The petitioner was able to make 75 per cent. There was only balance of 25 per cent. amount payable by the petitioner which in the instant case had also been paid by the petitioner on December 31, 2021, i. e., which is within sixty (60) days time from the date the payment of the 75 per cent. earlier made. Respondent did not issue the form 5 on the ground that respondent has no power to condone the delay in payment of tax which was paid beyond the cutoff date. On writ allowing the petition the Court held that it was admittedly Covid pandemic period and there were compelling circumstances faced by every person including business entities. Prima facie, the petitioner had not tried to evade payment of tax at any point of time and if at all there was any delay, the delay was only to the extent of 25 per cent. of the total tax payable which too he had paid in its entirety within sixty (60) days beyond the date of October 31, 2021. The delay was condoned. Direction issued to the respondent to immediately take necessary steps for issuance of form 5 under the Direct Tax Vivad se Vishwas Act, 2020.
Chandrakala Kasani v. PCIT (2024) 464 ITR 119 (Telangana)(HC)

S. 3 : Amount payable by declarant-Payment of tax-Condonation of delay-delay of three days in depositing arrears of tax deserves to be condoned. [S. 5, Art. 226] 2989
For the delay of three days, the Competent Authority did not accept the amount of tax deposited by the assessee and he was not permitted to file Form IV to entirely avail the benefit of the scheme. The Chairman of CBDT also rejected the application for condonation of delay of three days in depositing arrears of tax. The High Court Held that, legal principles laid down by Courts on the subject, delay of three days in depositing arrears of tax deserved to be condoned. (Followed *Shekhar Resorts Ltd. v. UOI [2023] 146 taxmann.com 121 (SC))* of the Direct Tax Vivad Se Vishwas Act, 2020)
Digvendra Pratap Singh v. UOI (2024) 296 Taxman 460/ 464 ITR 849 (All)(HC)

S. 3 : Declaration-Rejection of declaration-Erroneous determination of tax-Part payment made is not considered-Disabled to file revised Form 3 due to technical glitches on Website-Marginal delay in filing Form 4 attributable to respondents-Department is directed to accept declaration subject to making of payments of tax. [S. 3, 5(1), 5(2), Art. 226] 2990
The declaration was rejected as void for failure to pay the tax within stipulated time. On writ the assessee contended that the tax could not be paid due to technical glitches and also the mistakes of the respondents in processing her declaration. The order stating that the assessee's declaration under the 2020 Act was null and void was to be quashed. The respondents were directed to accept the assessee's declaration in form 1 under the 2020 Act and process it by issuing the final certificate in form 5 subject to the conditions, that the assessee made the balance payment of determined tax with interest at the rate

of 12 per cent. from October 31, 2021 till the date of payment and an additional amount of Rs. 2 lakhs within 21 days. (AY. 2017-18)
Neelam Ajit Phatarpekar (Mrs.) v. Asst. CIT (2024)462 ITR 467 /336 CTR 749 (Bom)(HC)

2991 **S. 4: Filing of declaration and particulars to be furnished-Pendency of revision application-Revision application was filed after due date but before extended period of limitation-Rejection of application is not valid. [S. 3, IT Act, S. 264 Art. 14, 226]**
Petitioner has filed revision application under section 264 after the specified date on 31 St January 2020. The application of the petitioner was rejected on the ground that the Revision application was filed on March 1, 2021. On writ considering various circulars and notifications and budget speech (2020) 420 ITR 115 (St)(146) the Court held that the Direct Tax Vivad Se Vishwas Act is neither a taxing statute nor an amnesty Act. it is a remedial /beneficial statute. Court also observed that considering the Taxation and Other laws (Relaxation of certain Provisions) Ordinance, 2020(2020) 422 ITR ITR 116 (St) and the order passed on suo motu 3 of 2020 in Cognizance for Extension of Limitation in, re (2020) 424 ITR 314 (SC). The limitation for filing a revision travelled beyond the specified date of January 31, 2020. Accordingly the petition is allowed, as the petitioner has deposited the entire disputed tax liability as computed in terms of the Direct Tax Vivad se Vishwas Act, form 5 is directed to be issued. (AY. 2012-13)
Kaajal Real Estate And Consultants Pvt. Ltd. v. PCIT (2024)470 ITR 573 (Delhi) (HC)

2992 **S. 4 : Filing of declaration and particulars to be furnished-Amount payable by declarant-Eligible assessee-Pendency of appeal-Rejection of declaration-Appeal filed by the assessee in the year 2015 was not pending as on 31st Jan., 2020-Order passed by the Tribunal recalling the order-Appeal of the assessee has to be considered as pending as on 31st Jan., 2020 which is the specified date as per the VSV Act-Order of rejection is quashed. [S. 3, 5(2), IT Act, S. 254(1), Art. 226]**
The appeal filed by the assessee in the year 2015 was not pending as on 31st Jan., 2020. However, in view of order dt. 3rd Sept., 2020 passed by the Tribunal recalling its order dt. 26th March, 2019 whereby appeal filed by the assessee was dismissed, the appeal was restored to its file i. e., appeal filed in the year 2015. Therefore, the appeal of the assessee has to be considered as pending as on 31st Jan., 2020 which is the specified date as per the VSV Act. When the assessee has filed declaration under the VSV Act to claim the benefit of the Scheme, the Tribunal had already recalled the order dt. 26th March, 2019 and therefore, the appeal preferred by the assessee before the Tribunal was pending as on 31st Jan hence it cannot be said that no appeal was pending as on 31st Jan., 2020 when the assessee filed the application/ declaration under the provisions of the Scheme. On writ the Court held that the action of the respondent authority of rejecting the declaration filed by the assessee is not tenable and accordingly, the same is quashed and set aside. The respondent authority is directed to consider and process the declaration filed by the assessee under the provisions of the VSV Act within a period of 12 weeks from the date of receipt of copy of this order. (AY. 2010-11)
Atul Roshanlal Gupta v. PCIT (2024) 167 Taxmann.com 634 / 341 CTR 569 / 242 DTR 433 / 8 NYPCTR 1170 (Guj)(HC)

S. 4 : Filing of declaration and particulars to be furnished-Rectification of order-Allegation of false declaration-Determination of tax attained finality-Once certificate is issued by Designated Authority-Rectification notice is barred by limitation. [S. 3, 4(6), 5, IT Act, 154, Art. 226, Form No 5] 2993

The assessee obtained a settlement of all disputes pertaining to tax demands and form 5 was issued and the total liability determined and conferred finality in terms as contemplated under the provisions of the Direct Tax Vivad Se Vishwas Act. Thereafter, the Assessing Officer invoked the power conferred by section 154 of the 1961 Act to revisit the computation of liability which had stood settled, up to the stage of appeal before the Commissioner (Appeals). On a writ allowing the petition the Court held that the validity of notice for rectification had to be evaluated on the basis of the date of its issuance as opposed to when the same may have been drawn. The reasons for rectification under section 154 of the 1961 Act, stated that the Assessing Officer while computing the additions in the original order of assessment, dated December 22, 2017, had referred to and applied an incorrect tax rate. The Commissioner (Appeals), while according part relief had recomputed the taxable income of the assessee and even at that stage, the issue of a wrong tax rate having been applied had not been either raised or alluded to. Even assuming that the power under section 154 of the 1961 Act was available to be exercised, notwithstanding the conclusion of proceedings under the Direct Tax Vivad Se Vishwas Act and the issuance of form 5, it would not be sustainable since the statutory period of limitation which would apply. That the rectification order, which was asserted to be passed in exercise of the powers conferred under section 154 of the 1961 Act, would not fall within the ambit of section 154 of the Direct Tax Vivad Se Vishwas Act. It was not the case of the Revenue that the assessee had failed to make a disclosure with respect to any material particular or any disclosure so made subsequently being found to be false. The rectification notice, rectification order under section 154 of the 1961 Act, the notices and order of demand under section 156 of the 1961 Act were quashed. The assessee and the Revenue should proceed in terms of the determination of tax made under the Direct Tax Vivad Se Vishwas Act (AY. 2015-16)

Satish Kumar Dhingra v. Dy. CIT (2024)467 ITR 574 (Delhi)(HC)

S. 4 : Filing of declaration and particulars to be furnished-Pendency of appeal-Order passed by Tribunal-Not served on the assessee-Appeal cannot be treated as pending-Rejection of application is held to be justified. [S. 2(1)(a), R. 9 Form Nos. 1, 2, Art. 226] 2994

Assessee filed Form Nos. 1 and 2 on 22nd Dec., 2020 to get the benefit of the DTVSV Act, however, on the date on which the assessee filed the Form Nos. 1 and 2 as per the provisions of s. 4 of the DTVSV Act r/w r. 9 of the DTVSV Rules, no appeal either before the Tribunal or before the High Court was pending. The assessee submitted that because the order of the Tribunal was not served upon the assessee, the appeal before the Tribunal is to be treated as pending and the assessee is entitled to get the benefit of the provisions of the DTVSV Act. Rejecting the petition the Court held that submission of the assessee is not acceptable for the only reason that the assessee was aware about the disposal of the appeal by the Tribunal on 4th June, 2019. Further, it is to be believed that the order dt. 4th June, 2019 passed by the Tribunal was sent to the assessee by the Tribunal through the registered A. D. post on 19th Aug., 2019 as per record of the Tribunal. Merely because the assessee received certified copy of the order from the

Tribunal on 22nd Dec., 2020, the assessee cannot contend that the appeal was pending before the Tribunal on the date of filing of the application.
Redex Protech Ltd. v. PCIT (2024) 337 CTR 843/ 159 taxmann.com 134 (Guj) (HC)

2995 **S. 4 : Filing of declaration-Delay in filing of appeal-Rejection of application by Designated Authority is affirmed. [IT Act, 271AAB, Art. 226]**
For the AY. 2013-14 penalty was levied under section 271AAB of the Act. On appeal the penalty was reduced partly. No further appeal was filed. Assessee sought to settle matter amicably in accordance with provisions of DTVSV Act, emphasizing Union's policy favouring settlement over litigation. Designated authority rejected that application/ declaration for reason of second appeal not filed before cut-off date 1-4-1919 to 31-1-2020. On writ the Court held that the petitioner did not file appeal before Tribunal, within time it also remained from him to file any defective proceeding seeking condonation of delay in filing such appeal before cut-off date therefore, no right vested or accrued to assessee to seek a settlement in terms of conditions prescribed by Act. Order of rejection is affirmed. (AY. 2013-14)
Umesh Garg v. UOI (2024) 297 Taxman 91 (All.)(HC)

2996 **S. 4 : Filing of declaration-Delay in filing of appeal-Rejection of application by Designated Authority is affirmed. [IT Act, 271AAB, Art. 226]**
For the AY. 2013-14 penalty was levied under section 271AAB of the Act. On appeal the penalty was reduced partly. No further appeal was filed. Assessee sought to settle matter amicably in accordance with provisions of DTVSV Act, emphasizing Union's policy favouring settlement over litigation. Designated authority rejected that application/ declaration for reason of second appeal not filed before cut-off date 1-4-1919 to 31-1-2020. On writ the Court held that the petitioner did not file appeal before Tribunal, within time it also remained from him to file any defective proceeding seeking condonation of delay in filing such appeal before cut-off date therefore, no right vested or accrued to assessee to seek a settlement in terms of conditions prescribed by Act. Order of rejection is affirmed. (AY. 2013-14)
Umesh Garg v. UOI (2024) 297 Taxman 91 (All.)(HC)

2997 **S. 4 : Filing of declaration--Refund-Set-Off of refund-Capital gains for assessment year 2016-17-Set off of demand for the Assessment year 2014-15-Direction is issued to Department to make suitable adjustments to transfer amount paid under Scheme for Assessment year 2016-17. [S. 3, 5, IT Act, S. 244A, Art. 226]**
On writ the Court held, that the authority concerned is to make suitable adjustments either physically or by online mode and to transfer the amount paid under the Direct Tax Vivad se Vishwas Scheme for the assessment year 2016-17 to the assessment year 2014-15, without any further delay. The Department had to consider the amount paid as capital gains for the assessment year 2016-17, under the Scheme for the assessment year 2014-15, as no incidence of tax arose for the assessment year 2016-17. Thus, suitable orders could be passed in accordance with law within a period of 30 days from the date of issuance of a copy of this order. (AY. 2016-17)
Dass Media Pvt. Ltd. v. PCIT [2023] 156 taxmann.com 286 / (2024)460 ITR 521/336 CTR 814 (Mad)(HC)

S. 9 : Act not to apply in certain cases-Tax arrear-Prosecution has been instituted on or before the date of filing of declaration-Prosecution has to be in respect of tax arrear which is relatable to an assessment year-Directed the authorities to decide the declaration in conformity with the DTVSV Act-SLP of Revenue is dismissed. [S. 2(1)(o), 9(a)(ii), S. 276C(2), 278B, Art. 226] 2998

The petitioner has filed the declaration for settling the dispute in respect appeals pending. The Authorities rejected the declaration on the ground that the prosecution has been initiated for failure to deposit the self assessment tax. On writ allowing the petition the Court held that where the prosecution had been instituted against assessee under section 276C(2), prosecution cannot be said to be in respect of tax arrear and hence, declaration of assessee would have to be decided in conformity with provisions of DTVSV Act. Circulars and Notifications : Circular No. 21/2020, dated 4-12-2020. (2020) 429 ITR 1 (St). Relied on Macrotech Developers Ltd. (2021) 434 ITR 131/ 280 Taxman 137 (Bom)(HC). SLP of Revenue is dismissed. (AY. 2010-11, 2011-12)

PCIT v. Pragati Pre Fab India Pvt. Ltd. (2024)467 ITR 167 /300 Taxman 358 (SC)

Editorial : Pragati Pre Fab India (P.) Ltd. v. PCIT (2023) 295 Taxman 269 / (2024)460 ITR 387 / 337 CTR 862 (Bom.) (HC)

Income Declaration Scheme, 2016

2999 **S. 183: Payment of tax-Adjustment of advance tax and self assessment tax-Matter is remanded with the direction for redo the exercise after examining the accounts of the assessee for AY. 2012-13 and ascertain whether the assessee has indeed made a correct declaration of income. [Art. 226]**

Amount paid by the assessee during the asst. yr. 2012-13 towards "advance tax" and "self assessment tax" after due date for filing of the return under S. 139 was whereas tax liability of the assessee for the said assessment year was reduced by the assessee in the declaration filed under the Income Declaration Scheme, 2016. But for the aforesaid issue regarding the tax liability of the assessee for the asst. yr. 2012-13 in the declaration filed by the assessee under Income Declaration Scheme, 2016, there is no impediment in allowing the assessee to adjust the amount paid as "advance tax" and "self assessment tax" towards tax liability of the assessee under Income Declaration Scheme, 2016. Matter is remanded to the respondent along with the AO for redo the exercise after examining the accounts of the assessee for asst. yr. 2012-13 and ascertain whether the assessee has indeed made a correct declaration of income for the Assessment year. 2012-13 in the declarations Court held that the declaration filed by the assessee may be accepted and closed under the provisions of the income-tax and Income Declaration Scheme, 2016. There are also certain arithmetical error in so far as the amounts to be paid by the assessee under the Income Declaration Scheme, 2016. This aspect also may be examined by the respondent along with the AO. If any discrepancy is noticed, the benefit of the income-tax and Income Declaration Scheme, 2016 may be denied to the assessee. (AY. 2012-13 to 2015-16)(SJ)

RJPN Developers v. PCIT (2024) 337 CTR 818 / 162 taxmann.com 569 (Mad)(HC)

Wealth-tax Act, 1957

3000

S. 35B: Failure to furnish returns of net wealth-Mechanical approval-High Court quashed the proceedings-Death of assessee-Criminal appeal abated - Non-filing of return is not a continuing offence-Court held that since sole assessee had died and she had been discharged, criminal appeal stood abated and disposed of. [Art. 136]

A complaint was filed against assessee under section 35B on ground that assessee wilfully failed to file return of wealth, even though she was having assessable wealth for relevant year. Complaint was admitted by Trial Court. Assessee filed a petition to quash proceedings on ground that sanction order was not proper as assessment order had not been placed before sanctioning authority. Trial Court dismissed petition. High Court held that since relevant assessment order had not been specifically referred to by sanctioning authority in his sanction to prosecute assessee under section 35B, same would be a case of mechanical signing of order on part of sanctioning authority and it would vitiate order of sanction and, accordingly, order of Trial Court was set aside and assessee was discharged. Court held that since sole assessee had died and she had been discharged, criminal appeal stood abated and disposed of. As regards tax liabilities of previous years were to be deducted from wealth to find out net taxable wealth, since income tax and wealth tax assessment for previous assessment years were not finalised and concluded, assessee was not able to file a correct and complete return and thus, failure on part of assessee to file wealth tax return in time was not wilful and only a wilful failure to file return shall be a punishable offence under section 35B High Court held that non-filing of return is not a continuing offence and failure to submit a return within a time will led to assessment of wealth-tax to best of judgment of Assessing Officer and after such an assessment, there would be no question of assessee filing a return and therefore, only for escaped assets, further particulars can be called for and consequential prosecution can be made under other provisions of Act and not for offence under section 35B and thus, assessee had established a case for discharged. Court held that since sole assessee had died criminal appeal stood abated and disposed of. (AY. 1993-94)

ACWT v. J. Jayalalitha (2024) 298 Taxman 5 /337 CTR 379(SC)

Editorial: J. Jayalalitha v. ACWT (2011) 337 ITR 1/ (2012) 20 taxmann.com 736 (Mad) (HC)

Allied laws

Advocate Act,1961

3001 **S. 24:Persons who may be admitted as advocates on a State roll-Duties of advocate-Production of evidence-Party cannot be penalised for fault of counsel-One more opportunity is granted to produce evidence-One more opportunity was granted to plaintiff to adduce evidence subject to payment of costs of Rs. 5000. - Every lawyer is expected to keep in mind the fact that he is also an officer of the Court and judicial system is based upon co- operation of lawyers-It is also expected from the concerned lawyers of parties to positively remain present before Court on the date given by the trail court. However, if the lawyer is not in a position to remain present, he shall make alternative arrangement for proceedings of the case in order to avoid inordinate delay. [Civil Procedure Code, 1908, O. 18 R. 24]**

The Trail court had repeatedly granted adjournments for plaintiff to present witness, but on final date, original lawyer engaged by parties could not reach Court within time, Trial Court closed the evidence stage. On writ allowing the petition the Court held that party cannot be penalised for fault of counsel. One more opportunity was granted to plaintiff to adduce evidence subject to payment of costs of Rs. 5000. Court also observed that, parties are completely dependent upon their lawyer to represent their case. Every lawyer is expected to keep in mind that he is also an officer of the Court and judicial system is based upon co operation of the lawyers. It is also expected from the concerned lawyers of parties to positively remain present before Court on the date given by the trail court. However, if the lawyer is not in a position to remain present, he shall make alternative arrangement for proceedings of the case in order to avoid inordinate delay.

Referred, *Noor Mohammed v. Jethanand (2013) 5 SCC 202 | AIR 2013 SC 1217, Ramdev Chauhan alias Raj Nath v. State of Assam (2001) 5SCC 714/ AIR 2001 SC 2231, Zahira Habibulla H. Sheik v. State of Gujarat, (2004) 4 SCC 158/ AIR 2004 SC 3114. (WP 227 No. 675 of 2024 dt. 8-8-2024)*

Gofelal Banjare v. Bhagelal Banjare (Dead) AIR 2024 Chhatisgarh 185 (HC)

Chartered Accountants Act, 1949

3002

S. 21A : Board of Discipline-Professional misconduct-Power of Central Government to make rules-Matter referred to Disciplinary Committee-Reference is held to be valid-Appeal is dismissed. [S. 21A(4), 29A(1) Chartered Accountants (Procedure of Investigations of Professional and Other Misconduct and Conduct of Cases) Rules, 2007, Rule 9(3)(b)]

Appellant, a member of an audit firm, was involved in auditing work for a bank. Some suspicious transactions occurred in bank's branch, but they were not flagged by audit firm. Complainant bank registered a complaint with Director (Discipline), who initially found appellant not guilty of any misconduct. However, Board of Discipline disagreed and decided to refer matter to Disciplinary Committee. Appellants challenged action of Board in High Court via a writ petition, seeking to declare rule 9(3)(b) of Rules, 2007 invalid on ground that this rule was ultra vires section 21A(4). However, Division Bench of High Court rejected this challenge and upheld validity of rule 9(3)(b) of Rules, 2007-Rule 9(3) provided additional option to Board for proceeding to deal with complaint by itself or referring it to Disciplinary Committee. Court held that rule 9(3) (b) is completely in sync with object and purpose of framing Chapter on 'Misconduct' under Act. Further, even if rule 9(3) could not be saved under section 29A(2)(c), it directly related to furthering purposes of Act in ensuring that a genuine complaint of professional misconduct against member was not wrongly thrown out at very threshold and therefore, impugned rule fell within scope of general delegation of power under section 29A(1). Appeal is dismissed.

Naresh Chandra Agrawal v. Institute of Chartered Accountants of India (2024) 298 Taxman 91 (SC)

Constitution of India.

3003 **Article. 136 : Special Leave to appeal by the Supreme Court-Lease of premises-Bid disqualified-Building Hiring Committee, which assessed premises suitability through technical bids and an on-site visit-Disqualification is held to be justified-Writ petition is dismissed-SLP is dismissed.**

Assessee's family rented out certain property to Income Tax Department for office space since 1999. Lease agreements renewed several times, with last agreement ending on March 31, 2024. Income Tax Department published notice for new office space and assessee submitted bid, but was disqualified. Assessee filed writ application for challenging Income Tax Department's decision to vacate leased premises and contended that Income Tax Department had rented property for over 24 years and decided to vacate it without justification and had not explained why his technical bid was rejected. It was noted that assessee did not allege any lease violation and a notice inviting bids for leasing space was published on 16. 02. 2024, and assessee, after submitting a bid, was disqualified and therefore, having failed, assessee could not challenge premises' vacation. Further, bids were evaluated by Building Hiring Committee, which assessed premises' suitability through technical bids and an on-site visit. In view of above facts, High Court held that there was no merit in assessee's claim and accordingly, dismissed writ application. Against said order assessee filed instant SLP. SLP is dismissed.

Aman Pathak v. Chief ITC (2024) 300 Taxman 589 (SC)

Editorial : Aman Pathak v. Chief ITC (2024) 166 taxmmann.com 250 (Pat)(HC)

3004 **Article : 226 : Power of High Courts to issue certain writs-Rent-Rent in terms of CPWD revisions for period from 31-1-1994 to 30-6-2021-Single Judge took note of rent which was calculated according to recognized principles of valuation and there was no dispute which required any adjudication in matter, writ petition was maintainable and rightly entertained by Single Judge and directions issued therein deserved to be sustained. [Art. 226]**

Petitioner (respondent herein) was owner of a building and Income Tax Department had taken said building on rent. Single Judge of High Court, on writ petition filed by petitioner, directed department to disburse to petitioner arrears of rent in terms of CPWD revisions for period from 31-1-1994 to 30-6-2021. Department filed appeal contending that writ petition was not maintainable. Dismissing the appeal the Court held that since Single Judge took note of rent which was calculated according to recognized principles of valuation and there was no dispute which required any adjudication in matter, writ petition was maintainable and rightly entertained by Single Judge and directions issued therein deserved to be sustained. Appeal of Revenue is dismissed.

PCIT v. Manoj Parmar (2024) 300 Taxman 76 (Cal.)(HC)

Editorial : Manoj Parmar v. UOI (W. P. No. 756 of 2007 dt. 17-3-2023 (Cal)(HC)

Consumer Protection Act, 1986 (2019)

S. 2(1)(o) : Service-Advocates-Professionals-Highly skilled-Success depends on various factors-Cannot be compared with business-Cannot be held for deficiency of service. S. 2(1)(b)(i)] Advocates Act, 1961, S. 2(a)] 3005

The Appellant, an advocate was hired by Mr. DK Gandhi for legal services. Disputes arose between them and the Respondent filed a consumer complaint before the district forum for deficiency in services. The District forum decided the complaint in favour of the respondent. The State Commission held that the services of lawyers/advocates did not fall within the ambit of "service" defined under section 2(1)(o) of the CP Act, 1986. The NCDRC, however in the Revision Application preferred by the respondent passed the impugned order holding that if there was any deficiency in service rendered by the Advocates/Lawyers, a complaint under the CP Act would be maintainable. Being aggrieved by the said impugned order passed by the NCDRC, the present set of appeals has been filed by the Bar of Indian Lawyers, Delhi High Court Bar Association, Bar Council of India. Court held that, with regard to the nature of the work of a professional, which requires a high level of education, training and proficiency and which involves skilled and specialized kind of mental work, operating in the specialized spheres, where achieving success would depend upon many other factors beyond a man's control, a Professional cannot be treated equally or at par with a Businessman or a Trader or a Service provider of products or goods.

Bar of Indian Lawyers Through its President Jasbir Sigh Malik v. D. K. Gandhi PS National Institute of Communicable Diseases May 14, 2024 2024 LiveLaw (SC) 372

Contempt of Courts Act, 1971

3006 **S. 2(c)(i) : Contempt of Court-Criminal contempt-For making Scandalous, unwarranted and baseless imputations against several sitting Judges of the High Court and district Courts-Court has sentenced a lawyer to six months imprisonment after holding him guilty of criminal contempt. [S. 5, 14, 15]**

Contemnor has made certain allegations against the learned sitting Judges of the High Court and learned Judges of the District Court. The learned Single Judge held that a bare perusal of the averments made show that they are scandalous and aimed at lowering the dignity and majesty of this Court. They have been made malafidely to interfere with administration of justice and amounting to contempt, intrinsically contemptuous in nature and fall within the definition of "Criminal Contempt" of the Contempt of Courts Act, 1971 under Section 2(c)(i). On appeal the division bench held that the contemnor/ respondent has made contumacious allegations in the appeal making scandalous, unwarranted and baseless imputations against the learned Judges of this Court as well as District Courts who have been discharging their judicial function. Moreover, being an Officer of this Court making such averments in the judicial pleading are more serious in nature. It is incumbent upon the Courts of justice to check such actions with a firm hand which otherwise will have pernicious consequences. Court also observed that having considered the material placed on record, submissions of contemnor, Court held that the contemnor has no repentance for his conduct and actions. Accordingly directed for undergo simple imprisonment for a period of 6 months with fine of Rs. 2,000/. (Cont. Cas (CRL)4 /2022 dt 9th January, 2024)

Court on its own motion v. Virendra Singh, Advocate. (Delhi)(HC) www.itatonline.Org.

Goods and Service Tax Act, 2017

S. 73 : Determination of tax not paid or short paid or erroneously refunded or input tax credit wrongly availed or utilised by reason of fraud or any wilful-misstatement or suppression of facts-Challenge against show cause notice under the CGST-Writ against show cause notice is dismissed-Alternative remedy –No violation of principle of natural justice-Frivolous petition only to avoid recourse to statutory remedy and take its chance with filing petition in High Court-Cost of Rs 5 lakh is awarded on the petitioner to be paid to the Maharashtra Legal Services Authority within four weeks.. [Maharashtra Goods and Services Tax Act, 2017, Art. 226] 3007

The Hon'ble Bombay High Court, recently, had an occasion to adjudicate upon a petition challenging a show-cause notice in a writ petition. The impugned notice dated 7th December 2023 have been issued under the CGST Act. After issuance of the show-cause notice (7th Dec'23), the Petitioner had filed its reply/objections and subsequently an order had been passed on 22nd July 2024, in pursuance of the show-cause notice. The Petitioner had filed detailed reply/objections, against the said order, raising various defences before the issuing authority. The Petitioner filed the petition impugning the show-cause notice, on 5th Sept'2024 viz. after the final order was passed. The prime grievance of the petitioner was that the show-cause was vague and being vague, it denied the Petitioner opportunity of setting up its defence viz. the vague notice made it difficult for the Petitioner to present its case since the Petitioner could not understand (owing to vagueness) what was the case of the Department. In other words, the Petitioner was not made aware of what was the case against it, that it was supposed to meet. And this, according to the Petitioner, resulted into violation of principles of natural justice. As a corollary, the Petitioner contended, the order passed in consequence of the show-cause notice was a nullity.

The Hon'ble Bench rendered the following findings:

a) The show-cause notice was, far from being vague, a detailed one and clearly raising various facts/issues. The notice stated/referred to information/ intelligent inputs that were received by the Dept, on the basis of which the notice was issued and the notice was unambiguous.

b) The Hon'ble Court noted that the Petitioners had filed detailed reply to the show-cause notice before the authority and while filing reply/ies, the petitioners were not handicapped by any vagueness; in fact the Petitioner had raised detailed defences/ propositions in its reply. No where in its reply had the Petitioner alleged any vagueness.

c) All in all, the show-cause notice was very clear and detailed. Since the Petitioners had filed detailed replies raising various propositions/defences, it meant that the Petitioners fully understood the contents of the notice and the alleged 'vagueness' did not prevent the Petitioners from filing reply. In other words, the allegation of vagueness was misconceived.

d) Further, if the Petitioners were genuinely affected by vagueness of the notice, they ought to have moved the Court forthwith whereas the show-cause notice dated 7th December 2023 was challenged on 5th September 2024.

e) Referring to the decision of the Hon'ble Apex Court in *Whirlpool Corporation v.. Registrar of Trade Marks (1998) 8 SCC 1,* the Hon'ble Court held that recourse to writ jurisdiction can be sought where Petitioner seeks enforcement of any of the fundamental rights or where there is a violation of the principles of natural justice or where the order or proceedings are wholly without jurisdiction, or vires of the Act is challenged. The Hon'ble Court lamented that the trend in recent times was to assail, in a challenge to the show-cause notice in a writ petition, validity of some statutory provision so as to circumvent the statutory appellate remedy.

f) Alluding to the decision in *UOI v. Coastal Container Transporters Association (2019) 20 SCC 446*, the Hon'ble Court held that writ petition can be entertained only where there was either of lack of jurisdiction or any violation of principles of natural justice.

g) Referring to the case of *Special Director v. Mohd. Ghulam Ghouse (2004)3 SCC 440*, the Hon'ble Court, observed that unless the show-cause notice is totally non-est in the eyes of the law for absolute want of jurisdiction of the authority, writ petitions should not be entertained for the mere asking and as a matter of routine.

The Court concluded that the above facts led to the inference that the Petitioner had filed a frivolous petition only to avoid recourse to statutory remedy and take its chance with filing petition in High Court. the petition was dismissed with exemplary cost of Rs. 5 Lakhs to be paid to the Maharashtra Legal Services Authority within four weeks. (WP No. (L) No. 27725 of 2024 dated 14 October 2024.)

Viswaat Chemicals Ltd. v. UOI (2024) 167 taxmann.com 450/91GSTL 114/106 GST 818 (Bom)(HC) www.itatonline.org

Prohibition of Benami Property Transactions Act, 1988, Benami Transactions (Prohibition) Amendment Act, 2016.

S. 2(8) : Benami Property-Shell companies-Transactions involved in case were related to period prior to Amendment Act, 2016-Pendency of review petition-Provisions of section 5 cannot be applied retrospectively-Order of Tribunal is affirmed. [S. 3, 5] 3008

Pursuant to search, investigations revealed multiple layering of funds through shell companies. Show cause notices were issued under Prohibition of Benami Property Transactions Act, 1988, classifying certain properties as benami. Adjudicating authority held that property was benami and confirmed attachment order. Appellate Tribunal set aside order of Adjudicating Authority holding that as transactions involved in case were related to period prior to Amendment Act, 2016 brought with effect from 1-1-2016, proceedings for prosecution and confiscation would be legally unsustainable. Relied on *UOI v. Ganapati Dealcom (P.) Ltd. [2022] 141 taxmann.com 389/289 Taxman 177/447 ITR 108 (SC))* wherein, it was categorically held that 'provisions under section 5 of 2016 Act, being punitive in nature, could only be applied prospectively and not retrospectively. Court held that as on date, decision of Supreme Court in Ganpati Dealcom (P.) Ltd. (supra) holds field and hence, arguments advanced on side of revenue that provisions of section 5 of Amended Act, 2016 have to be applied retrospectively, could not be countenanced. Further, pendency of review of decision in *UOI v. Ganapati Dealcom (P.) Ltd. (supra)*, could not be a ground to interfere with order passed by Tribunal. Order of Tribunal is affirmed.

Dy. CIT (BP) v. Advance Infra Developers (P.) Ltd. (2024) 297 Taxman 183 (Mad.)(HC)

S. 2(9) : Benami Transactions-Provisional attachment order-Alternative remedy-Writ petition is dismissed. [S. 24(1), 24(3), Art. 226] 3009

Petitioner challenged show cause notice and provisional attachment issued under Act of 1988 on ground that alleged benami transaction had taken place prior to 1-11-2016, date when Act of 1988 stood amended. Dismissing the petition the Court held that provisional assessment order as name suggests, is provisional in nature and adjudicating authority is best suited to decide question of Benami nature of property. Since show cause notice was a detailed notice running in several pages containing several factual basis and it was within province of adjudicating authority to decide whether property was Benami in nature and whether petitioner was liable for any action under Act of 1988, petitioner should avail remedies under Act of 1988 and take all possible factual and legal grounds before adjudicating authority. (AY. 2017-18 2018-19)

Santosh Bhadoriya v. UOI (2024) 298 Taxman 602 (MP)(HC)

3010 **S. 3 : Prohibition of benami transactions-Change of law-Benami Property-Review petition-Applicability of section 3 and 5 of unamended 1988 Act-Unconstitutional from their inception-2016 Act containing criminal provisions can only be applied prospectively and not retroactively - Decision recalled and restored for reconsideration. [S. 2, 3, 4, 5, 24, 27(3), 27(5), 53, 54, 54A, 67 Art. 14, 20(1)]**

The assessee-company purchased property in its name from various sellers on 2-5-2011. The Initiating Officer invoked amended section 24(1) and issued notice to assessee on the ground that said property was benami property. The Hon'ble High Court, thus, held that revenue could not apply amended definition of 'benami property' and 'benami transaction' on basis of Benami Transactions Amendment Act for immovable property which was purchased much prior to said amendment and quashed the impugned order. Thus, 2016 Act could only be applied prospectively. On appeal, the Hon'ble Supreme Court of India initially ruled that Section 3 of the unamended 1988 Act was unconstitutional due to being manifestly arbitrary, which also rendered Section 5 unconstitutional. This decision meant that authorities could not initiate or continue criminal prosecution or confiscation proceedings for transactions that occurred before the enforcement of the 2016 Act, which commenced on October 25, 2016. However, the Hon'ble Supreme court left the questions open to be adjudicated as it was not concerned with the constitutionality of the independent proceedings contemplated under the 2016 Amendment Act. Further, a review petition was filed which was allowed and restored for fresh adjudication as there was no challenge to the constitutional validity of the unamended provisions and the submissions of parties recorded in the judgement did not squarely address the issue of constitutional validity. Decision recalled and restored for reconsideration.

UOI v. Ganpati Dealcom (P.) Ltd. (2024) 301 Taxman 313/(2025) 474 ITR 354 (SC)

Editorial: UOI v. Ganpati Dealcom (P.) Ltd. (2022) 141 taxmann.com 389/ 289 Taxman 177/ 447 ITR 108 (SC), recalled

3011 **S. 5 : Property held benami liable to confiscation-Provisions of section 5 of Prohibition of Benami Property Transactions Act, 1988 as amended by Benami Transactions (Prohibition) Amendment Act, 2016 have to be applied prospectively and not retrospectively. [Art. 226]**

The revenue against the common order of the Tribunal passed under the Prohibition of Benami Property Transactions Act, 1988 filed miscellaneous appeals before the High Court. The order related to applicability of section 5 of the Prohibition of Benami Property Transactions Act, 1988 as amended by the Benami Transactions (Prohibition) Amendment Act, 2016.

The High Court earlier while disposing of the very same order of the Tribunal following the decision of the Supreme Court rendered in the case of *UOI v. Ganapati Dealcom (P.) Ltd. [2022) 289 Taxman 177/447 ITR 108 (SC)* passed a detailed order holding that the arguments advanced on the side of the revenue that the provisions of section 5 of the Prohibition of Benami Property Transactions Act, 1988 as amended by the Benami Transactions (Prohibition) Amendment Act, 2016 have to be applied retrospectively cannot be countenanced. Following the earlier order passed by the High Court, all the miscellaneous civil appeals are disposed of, leaving it open to the revenue herein to

proceed further on the basis of outcome of the review petition in Diary No. 34619 of 2022 (Review Petition No. (Civil) 359 of 2023) filed by it against the decision of the Supreme Court in the case of Ganapati Dealcom (P.) Ltd. (supra).
Dy. CIT (Benami Prohibition) v. MARG Ltd. (2024) 298 Taxman 655 (Mad.)(HC)

S. 24 : Benami Transactions-Notice and attachment of property involved in benami transaction-Corporate debtor-Liquidation by NCLT-Notice of attachment-Notice is issued in SLP filed by the Liquidator. [Insolvency And Bankruptcy Code, 2016, 60, 238] 3012
Corporate debtor had been ordered for liquidation by NCLT. Respondent attached property of corporate debtor under Prohibition Benami Property Transactions Act, 1988. Appellant-liquidator filed an application before NCLT stating that attachment of property by respondent was illegal. NCLT held that there was no conflict between two statutes as there was no bar in selling property of corporate debtor solely on ground that corporate debtor was under Liquidation, and that Liquidator was also not barred by IBC to add said property into liquidation estate. NCLT further held that liquidator was open to approach appropriate forum to raise attachment or any other relief as per provisions of Act. NCLAT held that Prohibition of Benami Property Transactions Act, 1988, and I&B Code, 2016, operate in their own field and issues/disputes, pertaining to an attachment, effected under Prohibition of Benami Property Transactions Act, 1988, cannot be gone into, by Adjudicating Authority (Tribunal), under I&B Code, 2016. Further, liquidator could not bypass a remedy, provided under Benami Act in assailing order, passed by Adjudicating Authority, before Appellate Tribunal, under Prohibition of Benami Property Transactions Act, 1988 and, therefore order passed by NCLT was free from legal infirmities. On SLP appellant/liquidator submitted that in this case, company under liquidation was not owner of any benami property and that purchase of shares in a company under liquidation did not make company itself owner of benami property Notice is issued in SLP filed by appellant, however, appellate proceedings shall continue in accordance with law.
P. Eswaramoorthy v. Dy. CIT (2024) 296 Taxman 578 (SC)
Editorial : P. Eswaramoorthy v. Dy. CIT(Benami Prohibition) (2023) 150 taxmann.com 321 (NCLT-Chennai)

S. 24 : Benami Transactions-Attachment of property-Satisfaction of initiating Officer that person in possession of property held benami may alienate property during period specified in notice-No material in possession of initiating officer, to show property held benami is likely to be sold-Attachment order is set aside. [S. 2(8), 2(9), 24(1), 24(3), Art. 226] 3013
By notice under section 24(1) of the Act, the respondent-authorities proposed to treat the constructions being raised by the petitioner on her plot to be a benami transaction, being carried out by the petitioner on behalf of her son-in-law. The plot in question was purchased by the petitioner by a sale deed dated April 23, 2016. By notice under section 24(3) the property was provisionally attached. On a writ petition allowing the petition, the Court held that the Act was amended with effect from October 25, 2016. The sale deed of the petitioner was admittedly prior to the amendment. The purchase of the land being prior to the coming into force of the amendment to the Benami Transactions

Act, 1988 no proceedings with regard to it could be initiated by the Department. That the total value of the constructions in dispute was around Rs. 1.05 crores and out of that sum an amount of Rs. 95 lakhs had been transferred to the builder from the bank account of the petitioner herself. Admittedly, the construction of the house was still under way, when the show-cause notice was issued. The mere statement of the contractor without any substantial supportive evidence is made the basis of the entire proceedings. Such a mere statement without any supportive evidence was not under law sufficient material in the possession of an Initiating Officer to arrive at a reason to believe that constructions were benami. The contractor had not given any reason for making such a statement, and the Department had also not even asked him on what basis he was making the statement. There was not even an iota of material placed by the Department before the court, referred to in the show-cause notice, on the basis of which the court could conclude that a reason to believe can be arrived at. Admittedly, the petitioner had already submitted her Income-tax returns for the relevant period and the proceedings were not yet completed. In the absence thereof the Department also could not claim that her earnings for the relevant year were beyond her known sources of income. There was no material in the possession of the Initiating Officer sufficient to believe that the assessee was a benamidar of her son-in-law, with regard to the constructions in question for initiating proceedings under section 24(1) of the Act. That no material had been referred to by the Initiating Officer in the attachment order or placed before the court which could demonstrate that the property was likely to be sold requiring him to resort to provisional attachment under section 24(3). The order of provisional attachment was without any basis.

Meera Pandey (Smt) v. UOI (2024)465 ITR 366 /164 taxmann.com 188 ((All)(HC)

3014 **S. 24 : Benami Property-Provisional Attachment of property-No provision warranting authorities to provide opportunity of Cross-Examination of witnesses whose statements have been relied upon-Orders continuing provisional attachment of property till order of adjudicating authority is not erroneous. [24(2), 24(3), 24(4)(a)(i), 26(3), IT Act, S. 132, Art. 226]**

Dismissing the appeals against the single judge order the Court held that in the absence of any provision of law and compelling circumstances warranting the authorities to provide an opportunity of cross-examination of witnesses, whose statements had been relied on by the authorities, at the stage of proceedings under section 24 of the 1988 Act, the plea raised by the assessees in this regard, could not be countenanced. The assessees had failed to furnish the necessary documents to substantiate their stand that the alleged transactions were not benami transactions. The Deputy (Commissioner) after making enquiry and calling for reports or evidence and taking into account all the relevant materials and with the prior approval of the approving authority had passed separate orders under section 24(4), continuing the provisional attachment of the property till the passing of the order by the adjudicating authority under section 26(3), which were provisional in nature. The provisions of law mandate the authorities to furnish the requested documents, particulars or evidence and provide an opportunity of being heard to the assessees only at the stage of adjudication proceedings and there is no provision under the Act to provide an opportunity to the appellants to cross-examine

the witnesses at the preliminary stage. Therefore, there was no error in the orders passed by the Deputy Commissioner (Benami Prohibition), as an interim measure, continuing the provisional attachment order of the property in question till the passing of the order under section 26(3) by the adjudicating authority. The court had rightly affirmed the orders and directed the authorities to proceed further in accordance with law. (AY. 2012-13 to 2018-19)

N. Naveen Baalaji v. Dy. CIT (Benami Prohibition) (2024)460 ITR 23 (Mad)(HC)

D. V. Balaji Baalaji v. Dy. CIT (Benami Prohibition) (2024)460 ITR 23 (Mad)(HC)

N. Sukanya Baalaji v. Dy. CIT (Benami Prohibition) (2024)460 ITR 23 (Mad)(HC)

Bonjour Bonheur Pvt Ltd Baalaji v. Dy. CIT (Benami Prohibition) (2024)460 ITR 23 (Mad) (HC)

K. Nagarjan Baalaji v. Dy. CIT (Benami Prohibition) (2024)460 ITR 23 (Mad)(HC)

N. Manjula Baalaji v. Dy. CIT (Benami Prohibition) (2024)460 ITR 23 (Mad)(HC)

Editorial : Refer Marg Realities Ltd v. Dy. CIT (Benami Prohibition) (2022) 448 ITR 574 (Mad)(HC) (SJ), is affirmed.

Prevention of Corruption Act, 1988

3015 **S. 13 : Criminal misconduct by a public servant-A Government Servant-Prevention of corruption-Criminal misconduct-Offences and prosecution-Discharge of accused-Special bearer bonds-Unexplained investments-Assets acquired in the name of son-Trust-Separate entity-Proceedings under Income Tax Act which were sought to be relied upon were related to assessment of income of assessee and not related to source of income and allegation of disproportionate assets under Prevention of Corruption Act, thus, said orders could not be basis to abort criminal proceeding-Trial court is directed to complete the trial expeditiously. The Court is only required to consider judicially whether the material warrants the framing of charge without blindly accepting the decision of the prosecution. Appeal is dismissed. The Trial court is directed to complete the trial expeditiously [S. 13(1)(c), 13(2) IT Act, 1961, S 69, 254(1), Art. 136]**
The assessee is an architect in NDMC. Based on certain information, it was noted that assessee owned assets disproportionate to known sources of income. Consequently, charges were filed against assessee and his son under sections 13(1)(e) and 13(2) of the PC Act, 1988. The main ground for charges were that assessee's son received substantial amount through encashment of special bearer bonds and he had facilitated commission of offense inasmuch as assets were acquired by assessee in the name of trusts and other firms in which his son was the sole beneficiary. The Trial court passed order on charge and the framing of charges. Meanwhile, on the income tax front, the case of the assessee was reopened by the Assessing Officer based on the search conducted by CBI. Accordingly, additions were made in the hands of the assessee with respect to income of a trust on ground that source of investments in said trust were not explained and special bearer bonds which were encashed in the account of said trust were not of investments from the trust. On appeal, on the income tax front, the Tribunal deleted the additions on ground that trust was a separate entity and since assessee's son was running its business, trust's income could not be added in the hands of the assessee. Income tax Appellate Tribunal deleted additions made by Assessing Officer in hands of assessee on ground that trust was a separate entity and since assessee's son was running its business, trust's income could not be added in hands of assessee. Assessee relied upon findings recorded by authorities under Income Tax Act and contended that in view of order of Tribunal there was no ground to proceed with criminal trial. However, High Court upheld order of charges. On appeal the Court held that scope of adjudication in both proceedings (Prevention of Corruption Act and Income-tax Act) were markedly different and therefore, findings in latter could not be a ground for discharge of accused persons in former. Proceedings under Income Tax Act which were sought to be relied upon were related to assessment of income of assessee and not related to source of income and allegation of disproportionate assets under Prevention of Corruption Act, thus, said orders could not be basis to abort criminal proceeding. Court held that even a strong suspicion founded on material on record which is ground for presuming the existence of factual ingredients of an offence would justify the framing of charge against an accused person. The Court is only required to consider judicially whether the material warrants the framing of charge without blindly accepting the decision of

the prosecution. Appeal is dismissed. The Trial court is directed to complete the trial expeditiously. (AY. 1989-1990 to 1995-1996, 1997-1998 to 2001-02)
Puneet Sabharwal v. CBI (2024) 299 Taxman 1 / 466 ITR 314 (SC)
R. C. Sabharwal v. CBI (2024) 299 Taxman 1 / 466 ITR 314 (SC)

S. 13 : Criminal misconduct by a public servant – Automatic vacation of stay – Power of High Court v. Supreme Court under Article 142- A reasoned stay order once granted in any civil or criminal proceedings, if not specified to be time-bound, would remain in operation till decision of main matter or until and unless an application is moved for its vacation and a speaking order is passed adhering to principles of natural justice either extending, modifying, varying or vacating same. [IT Act, 1961, S. 254(2A), Constitution of India, 1950, Art. 141, 142, 226(3),227, Code of Criminal Procedure, 1973, 397, 482, Indian Penal Code, 1860] 3016

The Supreme Court (larger Bench) held that its earlier directions in Asian Resurfacing mandating automatic vacation of stay after six months were unsustainable, as such blanket directions would amount to judicial legislation. The High Court, under Articles 226/227, has inherent jurisdiction to stay proceedings, and such power cannot be curtailed by a time-limit fixed by the Supreme Court under Article 142. A reasoned stay order, unless expressly time-bound, continues until the matter is decided or until modified/vacated upon proper application and hearing. Article 142 jurisdiction cannot be exercised to nullify substantive rights, defeat natural justice, or impose automatic lapses of judicial orders. Constitutional Courts should not ordinarily impose time-bound schedules for disposal of pending cases, except in exceptional circumstances. Consequently, there cannot be an automatic vacation of stay once granted by the High Court. (Impugned Asian Resurfacing directions overruled to this extent).
High Court Bar Association, Allahabad v. State of U.P. (2024) 299 Taxman 21 (SC)

Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002

3017 **S. 13 : Liability of guarantor is joint and several with principal debtor-Bank is entitled to proceed under SARFAESI Act for properties mortgaged by guarantor. [S. 13(4), 17]**
Respondent stood as a guarantor in respect of loan taken by borrower company and mortgaged his properties. Due to non-payment of loan, bank had taken recourse of section 13(4) to take possession of mortgaged property, which was quashed by High Court. On SLP the Court held that there being a mortgage and loan amounts recoverable, bank was entitled to proceed under SARFAESI Act. Further, liability of guarantor is joint and several with principal debtor set aside. Bank is entitled to proceed under SARFAESI Act, including notice under section 13(4). (CA No. of 2024, arising SLP(C) No 14982 of 2017, dt. 12-3-2024.
SBI v. Devendra Kumar Sinha (2024) 161 taxmann.com 76 / 184 SCL 28 (SC)

Reference to Finance Bill, Act, Circulars, Notifications, Schemes and Articles etc.

Finance Bill, 2024

Budget Speech of Minister of Finance for 2024-25(Interim Budget)(Ist February, 2024) (2024) 461 ITR 1 (St)

Finance Bill, 2024 (Bill No. 14 of 2024) (As Introduced in Lok Sabha on 1st February, 2024 (2024) 461 ITR 17 (St)

Circular No. 1 of 2024, dated 23 rd January, 2024-Subject : Explanatory Notes to the provisions of the Finance Act, 2023 (2024) 461 ITR 48 (St)

Finance Act, 2024 (Assent of President on 15 th, February, 2024) (2024)) 461 ITR 272 (St)

Finance Bill,2024-Budget Speech of Minister of Finance for 2024-25
Part A (2024) 465 ITR 11 (ST)
Part B (2024) 465 ITR 28 (ST)

Finance (No 2) Bill, 2024 (2024) 465 ITR 55 (ST)
Notes on Clauses (2024) 465 ITR 152 (ST)
Memorandum explaining the provisions in the Finance (No. 2) Bill, 2024 (2024) 465 ITR 213 (ST)

Finance (No. 2) Act, 2024 (Assent of the President on the 16 th August, 2024) (2024) 467 ITR 1 (ST)

Circulars.

Circular No. 20 of 2023, dated 28 th, December, 2023-Guidelines under sub-section (4) of section 194-O of the income-tax Act, 1961-Regarding (2024) 460 ITR 21 (St)

Circular No. 1 of 2024, dated 23 rd January, 2024-Subject : Explanatory Notes to the provisions of the Finance Act, 2023 (2024) 461 ITR 48 (St)

Circular No 2 of 2024, dated 5 th March 2024-Order under section 119 of the Income tax Act, 1961-Regarding (S. 10(23C), 12AA, 12AB)(2024) 462 ITR 257 (St)

Circular No. 3 of 2024, dated 6 th March 2024-Circular under section 119 of the Income-tax Act, 1961-Regarding. (S. 10(23C), 12AA, 12AB) (2024) 462 ITR 259 (St)

Circular No. 4 of 2024, dated 7 th March, 2024-Ex-post facto extension of due date for filing form 26QE which was required to be filed during the period 1-7-2022 to 28-2-2023 (pertaining to the financial 2022-23)-Regarding (2024) 462 ITR 261 (St)

Circular No 5 of 2024, dated 15 th March 2024-Circular under section 268A of the Income-tax Act, 1961 for filing of appeals by the Department before Income Tax Appellate Tribunal, High Courts and SLPs/ appeals before Supreme Court-Measures for reducing litigation-regarding (2024) 462 ITR 273 (St)

Circular / order dated Ist March, 2024. Order under section 119 of the Income-tax Act, 1961-Subject : Processing of returns of income validly filed electronically with refund claims under section 143(1) of the Income-tax Act, 1961 beyond the prescribed time limits in non-scrutiny cases-regarding (2024) 462 ITR 278 (St)

Circular /order dated 13 th March, 2024. Subject : Order under section 119 of the Income-tax Act,1961-Regarding (Business reorganisations, i. e. Scheme of amalgamation / merger etc) (2024) 462 ITR 280 (St)

Circular /order dated 18 th March, 2024-Subject : Order under section 119 of the Income-tax Act, 1961-Regarding. (Saturday / Sunday)(2024)) 462 ITR 283 (St)

Circular No 6 of 2024, dated 23 rd April, 2024-Partial modification of Circular No. 3 of 2023 dated 28-3-2023 regarding consequences of PAN becoming inoperative as per rule 114AA A of the Income-tax Rules, 1962-Regarding (2024) 463 ITR 13 (ST)

Circular No 7 of 2024, dated 25 th April, 2024-Extension of due date for filing of Form No. 10A/10AB under the income-tax Act, 1961-Regarding (2024) 463 ITR 14 (ST)

C. B. D. T. Circulars /orders : Dated 27 th June, 2024-Order under section 100 of the Direct Tax Vivad Se Vishwas Act, 2020 (" DTVsV Act")(2024) 465 ITR 276 (ST)

Orders, Dated 9 th July, 2024-Order under section 138(1)(a) of the Income-tax Act, 1961 (2024) 465 ITR 277 (ST)

Circular No. 8, dated 5 th August, 2024-Non applicability of higher rate of TDS /TCS as per provisions of section 206AA/206CC of the Income-tax Act, 1961, in the event of death of the deductee / collectee before linkage of PAN and Aadhaar-Regarding-(2024) 466 ITR 26 (St)

Circulars / Orders-Dated Ist August, 2024-Order under proviso to sub-section (5) of section 144B of the Income-tax Act, 1961 specifying the circumstances for the purposes of enquiries or verification functions by the Verification Unit-Regarding-(2024) 466 ITR 25 (St)

Circulars: C. B. D. T-Dated 20 th August 2024. Standardizing the process of filing application under section 10(46A) of the Income-tax Act, 1961-Regarding (2024) 467 ITR 101 (St)

Circular 9 of 2024, dated 17 th September, 2024-Further enhancement of monetary limits for filing of appeals by the Department before Income-tax Appellate Tribunal, High Courts and SLPs/appeals before Supreme Court: Amendment to Circular No. 5 of 2024-Measures for reducing litigation-Regarding (2024) 468 ITR 1 (St)

Circular No 10 of 2024, dated 29 th September, 2024-Extension of time lines following of various reports of audit for the assessment year 2024-25-Regarding (2024) 468 ITR 2 (St)

Circular No. 11 of 2024, dated I st October, 2024-Order authorizing income-tax authorities to admit an application or claim for refund and carry forward of loss and set off thereof under section 119(2)(b) of the Income-tax Act, 1961-Regarding (2024) 468 ITR 3 (St)

Circular No 12 of 2024, dated 15 th October 2024 –Guidance Note 1 of 2024 on provisions of the Direct Tax Vivad se Vishwas Scheme, 2024-Regarding (2024) 468 ITR 22 (St)

Guidelines dated 17 th October , 2024 – Sub – Guidelines for compounding of offences under the Income-tax Act, 1961 – Regarding- (F.No. 285/ 08/ 2014-IT (Inv.V) /163 (2024) 468 ITR 35 (St)

Circular No. 13 of 2024, dated October 26, 2024. Extension of due date for furnishing return of income for the assessment year 2024-25-Regarding (2024) 468 ITR 54 (St)

Circular No. 14/2024, dated 30th October, 2024-Condonation of delay under clause (b) of sub-section (2) of section 119 of the income-tax act, 1961 for returns of income claiming deduction under section 80p for assessment year 2023-24-Regarding (2024) 468 ITR 55 (St)

Circular No. 15 of 2024, dated 4th November, 2024-Order under section 119(1) of the Income-tax Act, 1961 fixing monetary limits of the Income-tax authorities in respect of reduction or waiver of interest paid or payable under section 220(2) of the Income-tax-Act-Regarding (2024) 469 ITR 1 (St)

Circular No. 16 of 2024, dated 18th November, 2024-Condonation of delay under section 119(2)(b) of the Income-tax Act, 1961, in filing of Form No. 9A/ 10/10B/10BB for the assessment year 2018-19 and subsequent assessment years-Regarding –(2024) 469 ITR 2 (St)

Circular No. 17 of 2024, dated 18th November, 2024-Condonation of delay under section. 119 (2)(b) of the Income-tax Act, 1961 in filing of Form No. 10-IC or Form No. 10-ID for the assessment years 2020 –21, 20021-22, and 2022-23-Regarding (2024) 469 ITR 4 (St)

Circular No. 18 of 2024, dated 30th November, 20024-Extension of due date for furnishing return of income in the case an assessee who is required to furnish a report referred to in section 92E for the assessment year 2024-25-Regarding (2024) 469 ITR 13 (St)

Circular No. 19 of 2024, dated, 16th December, 2024-Guidance Note 2 of 2024 on provisions of the Direct Tax Vivad se Vishwas Scheme 2024-Regarding (2025) 472 ITR 1 (St)

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Order No. S. O. 348(E), dated 20th January, 2025(Direct Tax Vivad Se Vishwas Scheme, 2024-Order passed on or before the specified date. i. e. the 22nd July 2024) (2025) 472 ITR 25 (St)

Notifications under section 90:

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Notification under section 88(2: Direct Tax Vivad Se Vishwas-Date of scheme coming in to force-Notification No. S. O. 4016 (E), dated 19th, September, 2024-Ist day of October 2024 as the date on which the Direct Tax Vivad Se Vishwas Scheme, 2024 shall come in to force (Notification No. 103/ 2024, F. No. 370142/17 / 2024-TPL (2024) 467 ITR 107 (St)

Guidelines :

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S. 11: Property held for charitable purposes-Can't drive Jagur, for charity drive, Meenakshi Subramaniam (2024) 300 Taxman 17 (Mag) /166 taxmann. com 116 (Article)

S. 11: Property held for charitable purposes-
Corpus Fund And Investment u/s 11(5) IN ITR7-by Anilkumar Shah, CA dt. 26. 08. 2024. www. itatonline. org.

S. 12A: Dilemma unsolved : Trust registration under the Income-tax Act, Chunauti H. Dholakia, Chartered Accountant (2024) 299 Taxman 9 (Mag.)/162 taxmann. com 80 (Article)

S. 13A : Political parties-Political parties-Chaos and confusion over Electoral Bonds-R. Santhaman (2024) 338 CTR 1 (Articles)

Business loss-Claiming of gold theft loss turns easier-Meenalshi Subramaniam (2024) 300 Taxman 1 (Mag)/165 taxmann. com 447 (Article)

S. 40(a)(ia): Amounts not deductible-Deduction at source-Is payment of tax by payee a pre-condition for payer to be eligible for deduction in spite of non-deduction of TDS?-V. K. Subramani (2024) 298 Taxman 41 (Mag.)/ 162 taxmann.com 311 (Article)

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S. 43B(h): How to report disallowances under section 43B(h) in Form 3CD Srinivasan Anand G (2024) 298 Taxman 1 (Mag.) 160 taxmann.com 520 (Article)

S. 43B(h): The provisions and debatable issues-Chandrakant K Thakkar, Chartered Accountant (2024) BCAJ-March-P. 11

S. 43B (h): Why should Govt. modify the provision of disallowance on delayed payment to MSEs ? Srinivasan Anand G. (2024) 297 Taxman 38 (Mag)/ 160 taxmann. com 102 (Article)

43B(h) Explained Briefly- Anilkumar Shah CA, dt. 25. 01. 2024 www. itatonline. org

S. 43B(h): Amendment section 43B(h) of the Income-tax Act, 1961-Deepak Jain CA, dt. 02. 02. 2024. www.itatonline.org

S. 43B(h): Payment to Micro or Small Enterprises-Applicability of section 43B(h)-Part I- Pankaj Agarwal, CA. dt. 11. 02. 2024. www.itatonline.org

S. 43B(h): Payment to Micro or Small enterprises and applicability of section 43B(h) of the Income-tax Act, 1961-Part II- Pankaj Agrwal, CA. Dt. 16. 02. 2024. www. itatnline. org.

S. 43B(h): Decoding of Section 43B(h) of Income-Tax Act, 1961 in relation to payment to Micro & Small Enterprise-Vinod Jain (2024) AIFTJ-March-P. 8

S. 45: Capital gains-A deposit in the capital gains special account will not reduce your tax from 20% to 12. 5%. Dr. Vinod K. Singania, CA Naveen Wadhwa (2024) 300 Taxman 9(Mag.) 165 taxmann.com 668 (Articles)

S. 50C: Analysis of provisions of Sections 50C & 50CA under the Income -tax Act , 1961 - Deepak P. Singh, dt. 18. 08. 2024. www. itatonline. org.

S. 54: Claim section 54 benefit for interior decoration-Meenakshi Subramaniam (2024) 298 Taxman 47 (Mag.)/ 162 taxmann. com 424 (Article)

S. 54: A lift can get section 54 exemption-Meenakshi Subramaniam (2024) 298 Taxman 11 (Mag)) /161 taxmann. com 73 (Article)

S. 54F: Provisions of section 54F of the Income Tax Act, 1961-by Sanjeev Goyal, CA dt. 14. 04. 2024. www. itatonline.org.

S. 56(2)(viib): Intricacies in valuation for Angel tax-Analysis through Judicial pronouncements-Anil Chachra (2024) 298 Taxman 55 (Mag)/ 162 taxmmann. com 227 (Article)

S. 56(2)(viib): New valuation method under Rule 11UA-Rakesh Kedia CA, Saloni Jain, Article Assistant (2024) 296 Taxman 21 (Mag)/ (2023) 157 taxmann. com 409 (Article)

S. 56(2) (viii): Should interest from land acquisition compensation be considered under section 56 (2)(viii). ? Mukesh Kohli,FCA (2024) 299 Taxman 17 (Mag.)/ 162 taxmann. com 422 (Article)

S. 68: Cash credits-Basir Ahamed Sisodia v. ITO (2020) 424 ITR 1 / 271 Taxman 247 (SC)-Basir Ahmed Sisodiya Case : An add-on to the ever-Expanding tax Jurisprudence-Amit Parsad, Advocate (2024)) 463 ITR 5 (Articles)(Journal)

S. 80G : Ram Mandir Donations : Eligibility for deduction under section 80G-Tarun Kunar Madaan (2024) 296 Taxman 53 (Mag.) 158 taxmann. com 479 (Article)

S. 80JJA: Deductions in respect of employment of new employee u/s 80 JJA as interpreted by the NFRA-Srinivasan Anand G. (2024) 296 Taxman 31 (Mag.) /158 taxmann. com 230 (Article)

S. 80JJA: Deductions under section 80JJAA of the Income-tax Act, 1961-Eshti Kapoor, Advocate (2024) 299 Taxman 1 /163 taxmann. com 285 (Article)

S. 115BAB: Need to extend sunset clause to promote new manufacturing domestic companies-Ved Jain (2024) 297 Taxman 1(Mag.)/ 159 taxmann. com 57 (Article)

S. 115BAC : New regime of taxation-Section 115BAC : Analysis-Comparison and important Points-Rajesh Mehta CA (2024) AIFTPJ-May-43

S. 115BAC : FAQ on New tax regime from AY. 2024-25-How to know which regime is better ? Divya B. Jokhakar CA-(2024) AIFTPJ-June-P. 9

S. 115BAC : Analysis of new and old Tax Regimes under Income-tax Act, 1961-Varsha S, SASTRA Deemed to be University (2024) AIFTPJ-December-P 74

S. 115JB : Company-Book profit-Compensation Under RFCTLRR Act, Book Profit under section 115JB and ITR-6- Anilkumar Shah, CA dt. 10. 09. 2024. www. itatonline. org.

S. 127: Balancing power, and fairness : A critical analysis of section. 127 of the Income-tax Act 1961, Amit Parsad, Advocate (2024) 469 ITR 1 (Journal

S. 144:What are the ways available to the aggrieved taxpayer where the Assessing Officer has finalized the ex parte assessment u/s 144- Sanjeev Goyal, CA dt. 03. 06. 2024. www. itatonline. org

S. 144B:Mandatory compliance of section 144B for draft assessment-R. Santhanam (2024) 336 CTR 1 (Articles)

S. 148: Reassessment-Whether judgement in Ashish Agarwal Requires reconsideration-Mr. Sanjay Bansal, Senior Advocate and Dr. Kuldeep Chand (2024) 462 ITR 1 (Journal)

S. 148: Reassessment-Beyond " Reason to believe" : Unveiling the implications of statutory changes and continuing checks-Amit Prasad, Advocate (2024) 464 ITR 1 (Journal)(Articles)

S. 148: Reassessment : Supreme Court decision in Rajeev Bansal-Analysis and comments-Jignesh R. Shah and Punit J. Shah, Advocates (2024) 468 ITR 1 (Journal) (Articles)

S. 148A: Why enquiry under section 148A(a) is mandatory and not directory ? Sanjay Bansal, Senior Advocate (2024) 465 ITR 1 (Articles)(Journal)

S. 153C: Block period for search assessment u/s 153C shall be reckoned from date of seized documents-Mohit Gupta (2024) 298 Taxman 27 (Mag)/ 161 taxmann. com 233 (Article)

S. 154: Rectification u/s 154: A comprehensive guide-Dr. Suhas Kulkarni (Retd, Add. CIT) (2024) 301 Taxman 25 (Mag.)/ 167 Taxmann. com 421 (Article)

S. 154 : Is section 154 of the Income-tax Act, 1961 amenable to Multiple Exercises of Power-Dr. M. V. K. Moorthy, Supreme Court Advocate, (2024) AIFTPJ-June-14

S. 220 : Powers of Income Tax Officer U/s. 220(6) of the Income Tax Act, 1961 and Stay of Demand - Dr. S. Sankar Ganesh, Tax Attorney, Adv. dt. 17. 04. 2024. www. itatonline. org.

S. 263: Time to pull back revisionary power arrayed u/s 263-Raji Nathani, Gopal Nathani (2024) 299 Taxman 35 (Mag.)/ 164 taxmann. com 588 (Article)

S. 264: Analysis of order passed under section 264-Dr. B. Ramaswany (2024) 297 Taxman 3 (Mag.)/ 159 taxmann. com 481 (Article)

S. 273A: The phrase 'genuine hardship' deserves liberal interpretation-V. K. Subramani (2024) 298 Taxman 19 (Mag.) / 161 taxmann. com 730 (Article)

Subjects.

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Arbitration clauses in unstamped agreements-Law and Business-Dr. Anup P. Shah (2024) BCAJ-July-P. 94

Angel tax abolition-Catalyzing start-up growth while navigating tax evasion concerns-Vishal Gupta, Sharukh Kamal (2024) 300 Taxmman 29 (Mag) /166 taxmann. com 239 (Article)

Accounts-Companies (Indian Accounting Standards) Second Amendment Rules, 2024-Analysis-S. Ramachandran (2024) 340 CTR 21 (Articles)

Accounts-Capitalisation of employee benefit costs-Some issues-S. Ramachandran (2024) 339 CTR 1 (Articles)

Accounts-IFRS 18-Some notable points-S. Ramachandran (2024) 338 CTR 25 (Articles)
Annual Information Systems (AIS)-I-T Department's clarification on interest income mismatch : Still scope to became a full pie in place of a half-Baked cookie-Mayank Mohanka (2024) 297 Taxman 52 (Mag.) / 160 taxmann. com 2 (Article)

Additional evidence-Second innings after 20 years-Gopal Nathani, Chartered Accountant (2024) 464 ITR 33 (Journal)(Articles)

Angeled Out by Anadi Varma, dt. 26. 07. 2024 www. itatonline. org.

Audit Trail-Chinmaya Deval (2024) Chamber's Journal –May-P. 118 to 123

Auditing Standard SA-600-Prashant Daftary & Vaibhav Sagvekar-Chamber's Journal-November-P 98-100

Panch pran Tax doctrine : (Rights, Remedies, Preparation, Presentation and Persuasion pillars) Applicability in assessment re-Assessment and Appeals-Sumit Nema, Senior Advocate (2024) AIFTPJ-March-18

Accounting & Audit-Ind As Implementation-5 major Challenges-Vivek Agarwal (2024) AIFTPJ-March-56

Accounting & Audit-Contingencies and Events Occurring After the Balance Sheet date-Charmi Shah-AIFTPJ-May-P. 69

Accounting & Audit-Navigating Tax Audit Amendments : A Guide for Tax Professionals-Charmi Shah CA –(2024) AIFTPJ-September-P 62

Accounting & Audit-Form 3CEB-Piyush Baid & Priya Fulwani CA (2024) AIFTPJ-September-P. 69

Accounting & Audit-Enhancing Auditor Responsibilities : NFRA Circular on managing Risks in Group Audits-Ashita Shah CA (2024) AIFTPJ-November-P. 117

Accounting & Audit-Revolutionizing Accounting and Auditing : The Power of AI-Ashita Shah CA-(2024) AIFTPJ-December-P. 66

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Burden of proof in case of cheque bouncing cases –Law and Business-Dr. Anup P. Shah Chartered Accountant-(2024) BCAJ-August-P. 94

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Book keeping-The Book keeping in Electronic mode-Milonee Shah, Samir Parmar, Chartered Accountants-(2024) BCAJ-April-P. 25

Block assessment-Finance Bill, 2024-New Scheme of Block assessment in search cases-R. Santhanam (2024) 339 CTR 41 (Articles)

Black Money-Exploring the Live Nexus between the Black Money, Income-tax and Money Laundering Legislations in India-Aditya Ajgaonkar, Advocate (2024) February-P. 49

Budget-Budget of Urban Local Body-BMC-Shilpa Mangaonkar, Chartered Accountant (2024) AIFTPJ-February-P 33

Bitcoin ETF : Can you escape the 30% tax rate ?-Naveen Wadhwa CA (2024) 296 Taxman 29 (Mag.)/ 158 taxmann. com 314 (Article)

Benami Law-New developments in Benami Law-An analytical study-V. N. Murlidhran, FCA (2024) 462 ITR 15 (Journal)

Block assessment scheme-Gaps in computation aspects of new Block Assessment Regime-R. S. Syal, Tax consultant (Former Vice-President, ITAT (2024) 299 Taxman 51 (Mag.) /164 taxmann. com 734 (Article)

Budget: Submission of Pre-Budget Memorandum in response to Union Budget, 2024' by The Income Tax Bar, Jalandhar CA. Jatinder Bhatia, dt. 03. 01. 2024. www. itatonline. org

Black Money-The penalty under section 43 of the Black Money (Undisclosed Foreign Income and Assets) and imposition Act, 2015-Aditya Ajgaonkar, Advocate (2024) AIFTPJ-May-P. 50

Black Money Act-The Income Tax Clearance Certificate : A short in the Arm for the Black Money Law Enforcement-Aditya Ajgaonkar, Advocate (2024) AIFTPJ-September-P. 50

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Capital gains-Issues in capital gains taxation consequent to Finance (No. 2) Act, 2024, V. K. Subramani, FCA (2024) 301 Taxman 43(Mag.)/ 167 taxmann. com 727 (Article)

Chamber Research-Chamber Research by the judges post conclusion of hearing-Whether Justified ? Pankaj R. Toprani Advocate (2024) November-P. 39

Capital gains-Exchange rate to be used for computing of capital gains in the case of cross-border transactions involving transfer of shares-International taxation-Mayur B. Nayak, Tarunkuar G. Singhal, Anil D. Doshi, Mahesh G. Nayak, Chartered Accountants (2024) BCAJ-July-P. 85

Corporate Guarantee and letter of comport: Untangling the Transfer Pricing Quandary-International taxation-Pankil Sanghvi, Prateik Sachdev Chartered Accountants-(2024) BCAJ-June-P. 20

Capital gains-Capital gains tax implications in Singapore on capital reduction or liquidation-International taxation-Sanjay v Iyer CA (Scotland) (2024) BCAJ-May-P. 35

CBDT Instructions-From clarity to confusion : Analysis of CBDT's Instruction No. 1 of 2023, Ramkrishan Choudhary CA, Parav Jain (2024) 300 Taxman 31 (Mag.) /166 taxmann. com 474 (Article)

Closements-Principle of mutuality cannot be extended to interest earned by mutual concern on fixed deposits placed with member banks-Kishor Karia, Chartered Accountant, Atul Jasani, Harsh Kothari, Advocates (2024) BCAJ-January-P. 55

Controversies-S. 139(5)-Claim of loss in revised return of income-Pradip Kapashi, Gautam Nayak, Bhadresh Doshi, Chartered Accountants (2024) January-P. 60

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Constitution of India-International Financial Disciplinary Jurisprudence-Requirements of-Dr. M. V. K. Moorthy, Supreme Court of India (2024) AIFTPJ-February-P. 61

Constitution of India-Legislative Competence-Constitutional-Contours-Dr. M. V. K. Moorthy, Supreme Court of India (2024) AIFTPJ-March-P. 54

Constitution of India-Checks and Balances on Proclamation of President Rule in a State-Legislative Competence-Dr. M. V. K. Moorthy, Supreme Court of India (2024) AIFTPJ-May-P. 65

Constitution of India-Doctrine of Double Jeopardy-Dr. M. V. K. Moorthy, Supreme Court of India (2024) AIFTPJ-June-P. 49

Constitution of India-Doctrine of Double Jeopardy-Dr. M. V. K. Moorthy, Supreme Court of India (2024) AIFTPJ-September-P. 45

Constitution of India-Apex Court of India-Plenary Powers-Dr. M. V. K. Moorthy, Supreme Court of India (2024) AIFTPJ-September-P. 45

Constitution of India-Article 341 (Schedule Castes)-Verdict of the Supreme Court-A Boon or Bane-Dr. M. V. K. Moorthy, Supreme Court of India (2024) AIFTPJ-December-P. 61

Chamber's Journal-Tax and Accounting Implications of Financial Instruments-(2024) January-2024-P. 15 to 104

-Company Law Implications on Financial Instruments-Radhika Agarwal & Rohan Shrivastava-Chamber's Journal-(2024) January-P. 15 to 24

-Income-tax Implications for various Financial Instruments : Chirag Shah & Rohan Umranikar-Chamber's Journal-(2024) January-P. 25 to 42

-Decoding Financial Instruments: Fema perspective-Vishal Gada & Zeel Jambuwala -Chamber's Journal-(2024) January-P. 43 to 48

-Financial Instruments & Stamp Duty-Gopal Malpani-Chamber's Journal-(2024) January-P. 59 to 68

-Accounting for financial instruments from an Issuer's perspective under IGAAP and Ind AS-Siddharth Iyer & Saurabh Mathur-Chamber's Journal-(2024) January-P. 69 to 84

-Navigating the Art and Science of valuation-Paras K. Savla-Chamber's Journal-(2024) January-P 85 to 104

Chamber's Journal-(2024)-Agriculture-Tax, legal, Accounting, Business and more-(2024) February-23 to 87

-Agriculture in India-A Marco Economic Snapshot-Rashmin Sanghvi-Chamber's Journal-(2024)-February-P 23 to 30

-Indian Agriculture : Emerging Business, Macro & Policy Perspectives-Ritesh Alladwar-Chamber's Journal-(2024)-February-P 31 to 34

-Constitution and Agriculture-Adit Anil Dani-Chamber's Journal-(2024)-February-P 36 to 43

-Agricultural Income & Tax Exemption-Subodh Shah-Chamber's Journal-(2024)-February-P 44 to 51

-Capital asset and capital Gains, analysis for Agricultural issues under Income-Tax law-Rajan Vora, Nishit Shah, & Lekh Mehta-Chamber's Journal-(2024)-February-P 52 to 61

-Accounting Considerations and Issues related to Agriculture Accounting-Parveen Kumar-Chamber's Journal-(2024)-February-P 62 to 66

-Fema Implications on Agricultural Sector and allied activities-Chidanand URS-Chamber's Journal-(2024)-February-P 67 to 75

GST Implications on Agricultural Sector and Allied Activities--Chamber's Journal-(2024)-February-P 76 to 82

-A Survey of land Laws in Maharashtra-Chinmoy Khaladkar-Chamber's Journal-(2024)-February-P 83 to 87

Chamber's Journal-Statutory Interpretation of Tax statute-(2024) March-11 to 96

-Navigating through Ambiguities and Silence : An Introduction to the Interpretation and Construction of Tax Statutes-Shreya Rao-Chamber's Journal-(2024) March-11-19

-Interpretation in a constantly evolving socioeconomic Landscape : Certain key provisions-Kavita Jhah-Chamber's Journal-(2024) March-20-27

-Interpretational issues in Exemption / deduction Provisions-Kajol Punjabi-Chamber's Journal-(2024) March-28-34

-Interpretational issues in Anti-Abuse Provisions-Ritu Shaktwat & Jinisha Jain-Chamber's Journal-(2024) March-35 –43

-The Art of Treaty interpretation-Under the Lens-Shefali Goradia & Anita Nair-Chamber's Journal-(2024) March-44-59

-Interpretation issues in Transfer Pricing Provisions-Aparan Khatri-Chamber's Journal-(2024) March-60-67

Interpretational issues in GST-Gujan Prabhakaran & Prerna Chopra-Chamber's Journal-(2024) March-68-79

Constitutional Interpretation of Tax Laws: Recent Trends-Daksha Baxi-Chamber's Journal-(2024) March-80-96

Chamber's Journal-Over view of States Fiscal Incentives-(2024) April-p-11 to 94

-Gujarat Government-State-Level Incentives-Dhaval Trivedi & Sharadha Khemka-Chamber's Journal (2024)-April-P. 11-21

-Maharashtra Government-State level Incentives-Ketan Tadsare & Amit Dadapure-Chamber's Journal (2024)-April-P. 22-28

-A Novice's Guide to Incentive Schemes of Karnataka-Gopal Machiraju, Bhushan Porwal & Aastha Sahay-Chamber's Journal (2024)-April-P. 29-38

-Andhara Pradesh and Telengana : Incentives being offered to Fuel Industrial Growth-Vipul Mittal-Chamber's Journal (2024)-April-P. 39-48

-Tamil Nadu Government's Sectoral Policies and Strategic Initiatives-Raul Jain-Chamber's Journal (2024)-April-P. 47-58

-Unlocking Novel Opportunities-Uttar Pradesh's State Industrial Incentive Policies-Kulraj Ashpani-Chamber's Journal (2024)-April-P. 59-64

-Production Linked Incentives-Hits and Misses-Gautam Pai-Chamber's Journal (2024)-April-P. 65-75

-Free Trade Agreements-Over View-Meetika Baghel & Neha Sethi-Chamber's Journal (2024)-April-P. 76-88

-Key Legal Interpretation issues in State Incentive Scheme-Gyanendra Tripati-Chamber's Journal (2024)-April-P. 89-94

Chamber's Journal-Salary Taxation-Overview and Contemporary issues-(2024) May-13-117

-A Primer on salary Taxation : Basic Concepts-Radha Halbe Deodhar & Ankit Kothari-Chamber's Journal (2024) May-P. 13-22

-Navigating India's New Tax Regime: Simplifying Complexity or adding Confusion ? Rohini Ramya-Chamber's Journal (2024) May-P. 23-30

-Taxation of CTC Components-K. Prasanna-Chamber's Journal (2024) May-P. 31-42

-Taxation of Retirals-Deepashree Shetty-Chamber's Journal (2024) May-P. 43-52

-Employees Stock Options-PV Srinivasan-Chamber's Journal (2024) May-P. 53-77

-TDS on salary-Parul Jolly & Aditi Gupta-Chamber's Journal (2024) May-P. 78-86

-Key Elements of Income-tax Returns (ITRs)-Hetal Gada-Chamber's Journal (2024) May-P. 87-105

-Cross-Border Workforce : Analysing the Tax Implications of Employees Secondment in to India-Sonu Iyer & Nikita Vora-Chamber's Journal (2024) May-P. 106-117

Chamber's Journal-Centralised Processing Centre-Law and Practices (2024) June-13-110

-CPC-Legal Framework & Judicial Intervenation - Vipul Joshi & Prasant Ghumare-Chamber's Journal (2024) June-P. 13-36

Computerised Processing of ITRs at Central Processing Centre (CPC), Bangalore-A Bane or Boon-Parveen Kumar & Gaurav Bhuddi-Chamber's Journal (2024) June-P. 37-51

CPC and tax Demands and refunds-Tarini Chaudhary Tandan-Chamber's Journal (2024) June-P. 52-60

TDS Reconciliation Analysis and Correction Enabling System (TRACES)-Aditi Gupta & Nehal Kumar-Chamber's Journal (2024) June-P. 61-69

-AIS-Annual Information Statement & TIS-Tax Information Summary-Avinash Rawani-Chamber's Journal (2024) June-P. 70 –77

-Navigating the Labyrinth: Challenges Faced by Non-Resident Tax payers while dealing with Income Tax systems-Manish Aggarwal-Chamber's Journal (2024) June-P. 78 –89

-Tax and Technology : Examining the role and relevance of digital signatures and DIN (Document identification number)-Ashish Mehta & Anuraag Bukkapatnam-Chamber's Journal (2024) June-P. 90 –98

-Judicial developments on the issues faced by the tax payers considering the action undertaken contrary to the law by the CPC-Rajat Soni--Chamber's Journal (2024) June-P. 99 –110

Chamber's Journal-Tax Audit Report & ITR for AY. 2024-25-(2024) July-13-92

-Navigating through Form 3CD :Recent amendments, key clauses and Rulings-Vrushti Galani & Priyanka Gala-Chamber's Journal (2024) July-P. 13 –22

-Introduction of clause (h) in section 43B of the Act-Opportunities and challenges Ahead-Narensdra Joshi-Chamber's Journal (2024) July-P. 23 –30.

-Key Updates Affecting Tax Audit Report & ITR for AY. 2024-25-Nehal Sheth & Neena Sharma-Chamber's Journal (2024) July-P. 31 –49

-Implications of the Legal Entity Identifier (LEI) and SBO Requirement in New ITR Forms: Enhancing Financial Transparency-Chamber's Journal (2024) July-P. 50 –54

-Analyzing other key changes in ITR Forms : Implications for taxpayers and Compliance Requirements-Anita Basrur & Gaurav Sethiya-Chamber's Journal (2024) July-P. 55 –62

-Updates / changes in ITR-7 and Audit Report in Form 10B/ 10BB applicable to Charities-Aditya Bhatt-Chamber's Journal (2024) July-P. 63 –72

-Leveraging the Tax Technology for Income Tax Returns and tax Audit Process for 2024 Compliance reason-Manoj Rathi-Chamber's Journal (2024) July-P. 73 –79

-Fresh disclosure requirements-An added burden on tax Auditor's Cap-Ashwin R& Rony Anthony-Chamber's Journal (2024) July-P. 80 –92

Chamber's Journal –Budget 2024-Tax proposals-(2024)-August P. -11-144

-Government's Direction on tax Simplification-Dhiren Shah-Chamber's Journal –(2024) August-P. 11-18

-Taxation of Capital gains for Residents-Abhitan Mehta-Chamber's Journal –(2024) August-P. 19-27

-Taxation of Capital gains for Non-Residents-Parul Jain & Ipsita Agarwalla-Chamber's Journal –(2024) August-P. 28-38

-Reassessment Provisions Reassessed by Finance (No. 2)Bill 20024-K. K. Chaythanya & Vipul Kamath-Chamber's Journal –(2024) August-P. 39-63

-The Direct Tax Vivad Se Vishwas Scheme, 2024-Kishor Phadke-Chamber's Journal –(2024) August-P. 64-68

-Block Assessments are back !-Dharan Gandhi-Chamber's Journal –(2024) August-P. 69-81

-Provisions affecting Benami Law and Black Money Law-Dhinal Shah & Rohit Pansari-Chamber's Journal –(2024) August-P. 82-89

-Personal Tax Proposals-Santhosh S. -Chamber's Journal –(2024) August-P. 90-97

-Budget-2024-Impact on Taxation of Partnerships-Ishita Farsaiya-Chamber's Journal –(2024) August-P. 98-104

-Amendments in Corporate Tax and Domestic Transfer Pricing-Neeraj Jain-Chamber's Journal –(2024) August-P. 105-108

-Rationalisation of TDS and TCS Provisions-Ketan Vajani-Chamber's Journal –(2024) August-P. 109-115

-Charitable Trusts-Proposed Amendments-Vipin. Batavia-Chamber's Journal –(2024) August-P. 116-122

-M& A and Restructuring Amendments-Amol Khanna & Anshul Gupta-Chamber's Journal –(2024) August-P. 123-132

-Equalisation Levy-Amendments-Ganesh Rajagopalan-Chamber's Journal –(2024) August-P. 133-137

-IFSC related proposals-Suresh Swamy & Nehal Sampath-Chamber's Journal –(2024) August-P. 138-143

-Key Indirect Tax Proposals-R. Parthasarathy & Kartik Solanki-(-Chamber's Journal –(2024) August-P. 144-151

Chamber's Journal-GST Landscape-Issues & Challenges-(2024) September-P. 17-80

-GST on related Party Transactions : A Comprehensive Analysis-Kumar Visalaksh & Ashish Garg –Chamber's Journal-(2024) September-P. 17 to 23.

-Emerging Technologies in streamlining Tax Administration & Compliance-Jigar Doshi-Chamber's Journal-(2024) September-P. 24-31

-GST Amnesty Scheme-Ritesh Kanodia & Chintan Vasa-Chamber's Journal-(2024) September-P. 32-36

-GST Dispute Resolution Mechanism Under GST-Sudipta Bhattacharjee & Ariyadeep Roy--Chamber's Journal-(2024) September-P. 37-44

-An Overview of GST Audits / Assessments-Niraj Bagri & Karan Awtani-Chamber's Journal-(2024) September-P. 45-51

-Landmark Judicial Precedents : Steering the direction of Indirect Tax laws-Shivam Mehta & Tanya Garg-Chamber's Journal-(2024) September-P. 52-60

-Place of supply-Provisions and Key Issues-Chamber's Journal-(2024) September-P. 61-70

-GST Credit-Challenges and Issues-Parita Jugal Shah-Chamber's Journal-(2024) September-P. 71-80

-e. Dispute Resolution Scheme-Tread carefully-Nikil Mutha-Chamber's Journal-(2024) September-P. 81-89.

Chamber's Journal-Family Arrangements & Settlements-(2024) October-P. 9-70

-Understanding of Family Settlements in India and globally-Chamber's Journal –(2024) October-P. 9-16

-Key Features in a family Settlement Agreement-Radhika Gaggar & Shaishavi Kadakia-Chamber's Journal-(2024) October-P. 7-24

-Taxation in the hands of individuals and corporate entities /parties to family agreements-Pranav Sayta & Ajay Agashe-Chamber's Journal-(2024) October-P. 25-32

-Important Case laws on Family Arrangement-Vinit Desai & Yasvardhan S. Gupta-Chamber's Journal –(2024)-October-P. 33-40

-Stamp Duty in Family Settlement Agreement-Sharad Abhyankar & Ritwik Kulkarni-Chamber's Journal –(2024)-October-P. 41-54

-Family Settlements: Stock Exchange and Corporate Law Disclosures--Akash Mishra & Palak Sethi-Chamber's Journal –(2024)-October-P. 55-63

-Understanding Global Estate Duties and Inheritance taxes with respect to family Settlement Agreements-Amber Bhavsar-Chamber's Journal-(2024) October-P. 64-70

Chamber's Journal-Insolvency & Bankruptcy Code-Analysis-(2024) November-P. 9-95

-IBC and Income-tax-Nikil Tiwari & Palak Mehta-Chamber's Journal-(2024) November-P. 9-25

-IBC and GST-Prakasa Rao & Shraddha Sharma-Chamber's Journal-(2024 November-P. 26-32

-Navigating Accounting, Auditing, Allied Regulations, and Resolution Professional opportunities under IBC-Ashish Makhija-Chamber's Journal-(2024) November-P. 33-45

-The Interplay between PMLA with IBC-Aditya Ajgaonkar-Chamber's Journal-(2024) November-P. 46-59

-Analysis of Recent Supreme Court Cases and Overcoming Challenges under IBC-Anil Goel-Chamber's Journal-(2024) November-P. 60-69

-Policy Initiatives : Influence on Credit Market, Group / Cross-Border Insolvency, Others-Vikas Chandra-Chamber's Journal-(2024) November-P. 70-76

-IBC-Impediments to its Robustness-Sumant Batra-Chamber's Journal-(2024(November-P. 77-85

-Making Insolvency and Bankruptcy Code more effective : A Roadmap for the future-Pradeep Joy & Shankey Agarwal-Chamber's Journal-(2024(November-P. 86-94

-The Vagaries of IBC Law-Guru Prasad Makam-Chamber's Journal-(2024(November-P. 95-97

Chamber's Journal-Capital Gains-Tax controversies and Considerations –(2024) December-P. 9-83

-Conversion of Company in to LLP and Vice Versa-Aseem Chawla & Nivedita Jha-Chamber's Journal-(2024) December-P. 9-16

-Capital Gains related to partnership firms / LLP(s)-Specific issues-Pilar Shivanand Nayak & Puja Borar-Chamber's Journal –(2024) December-P. 17-26

-Tax implications on exemption under section 54 and 54F-K. Prasanna-Chamber's Journal-(2024)-December-P. 27-40

-Flat Owners Tax issues relating to Development agreement-Deepa Khare-Chamber's Journal-(2024)-December-P. 41-46

-Tax implications on conversion of capital asset in to stock in trade and vice-versa-Madhukar Dhakappa & Keerthana Prabhu-Chamber's Journal-(2024)-December-P. 41-46

-Capital gains implications on Depreciable Assets-Vinesh Kriplani & Vasudevan G. -Chamber's Journal-(2024)-December-P. 55-63

-Tax consequences on sale of assets held outside India by Residents-Siddharth Kaul-Chamber's Journal-(2024)-December-P. 64-66

-Key Direct Tax Aspects for Convertible Instruments-Rohinton Sidhwa & Namrata Arora-Chamber's Journal-(2024)-December-P. 67-73

-Capital Gains on Sale of property in case of Charitable Trust-Sambhav Mama-Chamber's Journal-(2024)-December-P. 74-83

Charitable Trust Registration and issues under the Income tax Act, 1961-Ashok Mehta (2024) AIFTJ-May P. 14

Capital gain-Co-Ownership-Some Capital gain implications-Dinkle Haiya Advocate (2024) September-P. 9

CSR as Tax Shield : Tax Compliance and CSR-Charmi Shah CA (2024) AIFTPJ-November-P. 36

D.

Direct Tax Vivad Se Vishwas Scheme, 2024 (DTVVS)-Illustrations on the computation of disputed tax under the Direct Tax Vivad Se Vishwas Scheme, Naveen Wadhwa CA, Srinivasan Anand G, Research and Advisory (2024) 301 Taxman 7 (Mag.)/ 166 Taxmann. com 749 (Article)

The Direct Tax Vivad Se Vishwas Scheme, 2024-FAQs issued by CBDT-Dinkle Hariya, Adv. dt. 30. 11. 2024. www. itatonline. org. (2024) AIFTPJ-November-P. 8

Direct Tax Vivad Se Vishwas Scheme, 2024-Vivad Se Vishwas Scheme-2024-Resolution, Trust, and Harmony in Tax Disputes - Neelam Jadhav, Adv. dt. 30. 11. 2024. www. itatonline. org (2024) AIFTPJ-November P. 24

Direct Tax Vivad Se Vishwas Scheme 2024: Salient Features- Narayan Jain Adv. and Dilip Loyalka, CA dt. 15. 10. 2024. www. itatonline. org.

Direct Tax Vivad se Vishwas Rules, 2024. Notification dated the 20th September, 2024-by, dt. 21. 09. 2024. www. itatonline. org.

Debentures-An Analysis-Law and Business-Dr. Anup P. Shah (2024) October-P. 109

Document-Reconciling inconsistencies in a document-Law of Business-Dr. Anup P. Shah Chartered Accountant-(2024) BCAJ-April-P. 83

Double Taxation relief-Uncertainties in determining tax payable in India and Abroad-R. Santhanam (2024) 336 CTR 9 (Articles)

Dematerialization of Securities of Public and Private Companies (Other than Small Companies)-Kaushik Jhaveri –Chamber's Journal –(2024) July-P. 93-101

Dastur Essay Competition 2024-Abortion Law World wide : Comparative Analysis and Ethical Consideration-List of winners-Chamber's Journal-(2024) July-102

Dastur Easy Competition, 2024-Was the revocation of Article 370 of the Constitution of India justified and desirable-Beauty Gupta-Chamber's Journal-(2024) September P. 90-101 Digital-PAN 2. 0 :A Digital Leap in Tax Payers Services-Vinod Kumar Jain FCA (2024) AIFTPJ-December-P. 8

E.

Equalisation Levy-Digital Tax war and Equalisation Levy-International Taxation-Rashmin Sanghvi Chartered Accountant (2024) BCAJ-September-P. 55

Education-Accelerating India's March of Education with Technology-TV Mohandas Pai and Nisha Holla (2024) BCAS-July-P. 16

Emigrating Residents and Returning NRIs –Part-I-International Taxation-Ruthvik Sanghvi, Bhavya Gandhi Chartered Accountants –(2024) BCAJ-June-11

Emigrating Residents and Returning NRIs-Part-II International Taxation-Ruthvik Sanghvi, Bhavya Gandhi Chartered Accountants –(2024) BCAJ-August-13

Evidence-Significance of Electronic / Digital records as Evidence-(Bharatiya Sakshaya Adhiniyam, 2023(BSA) R. Santhanam (2024) 339 CTR 19 (Articles)

Estate Planning-Private Trusts (Part 1) Baiscs of a Private Trust-Shashi Bekal, Advocate (2024) AIFTPJ-February-P. 54

Estate Planning-Private Trusts-Part 1-Roles and Responsibilities-Shashi Bekal, Advocate (2024) AIFTPJ –March-P. 48

Estate Planning-Wills-Living Wills in India-Nidi Gajkumar Dotia, Advocate, (2024) AIFTPJ-June-P. 25

ESG Taxation: Harmonizing Tax policy with Sustainable Development Goals-Piyush Baid (2024) AIFTPJ-March-P. 27

E-Evidence in E-era-Justice Shivakant Prasad (Retd), Former Judge, Calcutta High Court-(2024) AIFTPJ-March-P. 32

F.

Finance (No. 2 Act, 2024-Important Amendments by the Finance (No. 2)Act, 2024-Gautam Nayak, Yogesh Thar, Anjali Agrawal, Bhaumik Goda, Jagdish T. Punjabi, Bhadresh Doshi, Anil Sathe, Chaitee Londhe, Chartered Accountants (2024) BCAJ-September-P. 13-54

Finance (No. 2 Act, 2024-Important Amendments by the Finance (No. 2)Act, 2024-Charitable Trusts-Gautam Nayak Chartered Accountant –(2024) BCAJ-September-P. 13 to 16

Finance (No. 2 Act, 2024-Important Amendments by the Finance (No. 2)Act, 2024 –Capital gains-Yogesh Thar, Anjali Agrawal Chartered Accountants (2024) BCAJ-September-P. 17 to 24

Finance (No. 2 Act, 2024-Important Amendments by the Finance (No. 2)Act, 2024-Buy-Back of shares-Bhumik Goda Chartered Accountant –(2024) BCAJ-September-25 to 34

Finance (No. 2 Act, 2024-Important Amendments by the Finance (No. 2)Act, 2024-Re-Assessment Proceedings-Jagdish T. Punjabi Chartered Accountant –(2024) BCAJ-September-35 to 43

Finance (No. 2 Act, 2024-Important Amendments by the Finance (No. 2)Act, 2024-Block Assessment-Bhadresh Doshi Chartered Accountant (2024) BCAJ-September-P-45 to48

Finance (No. 2 Act, 2024-Important Amendments by the Finance (No. 2)Act, 2024-Other Important Amendments-Anil Sathe, Chaitee Londhe Chartered Accountants (2024) BCAJ-September-P. 49 to 54

First Appellate Authorities-Whether an inordinate delay in the disposal of appeals by the First Authorities is justifiable ?-Pankaj R. Thoprani Advocate, (2024) July-P. 24

Family settlement-Family settlement agreement-An effective tool to save disputes & Taxes-A practical demonstration-Mayank Mohanka (2024) 298 Taxman 35 (Mag)/ 162 taxmann. com 112 (Article)

Finance Bill, 2024-Changes in capital gains tax by Finance (No. 2 Bill, 2024-R. Santhanam (2024) 339 CTR 25 (Articles)

Finance Bill, 2024-New Scheme of block assessments in search cases-R. Santhanam (2024) 339 CTR 41 (Articles)

Finance Bill, 2024-Proposed changes in income-tax reassessments-R. Santhanam (2024) 339 CTR 32 (Articles)

Finance Bill, 2024-Interim budget & Finance Bill, 2024-Rajesh Mehta Chartered Accountant (2024) AIFTPJ-February P. 8

Finance Bill, 2024-Withdrawal of outstanding Tax demands (Proposed in Union Budget, 2024-25-Vipul B. Joshi Advocate (2024) AIFTPJ-February P. 24

Futures and options-Income-Tax Issues for taxation of 'Futures and options' (2024)296 Taxman 43 (Mag.)/158 taxmann. com 318 (Article)

Form No. 3CD : Analysis of changes notified by CBDT to tax Audit report in Form No. 3CD-Srinivasan Anand G. (2024) 297 Taxman 43 (Mag.)/ 160 taxmann. com 195 (Article)

Finance Bill, 2024-Union budget-Know the nuts & bolts-Prabhakar K S (2024) 299 Taxman 27 (Mag.)/ 164 taxmann. com 244 (Article)

Finance Bill, 2024-Capital gains-Is dropping of rate of tax on capital gain to 12. 5% a bait to bury cost of indexation benefits-Raji Nthani, Gopal Nathani (2024) 299 Taxman 40 (Mag.)/ 164 taxmann. com 652 (Article)

Finance Bill, 2024-Budget 2024: The law & Issues in shifting from exemption regime under section 10(23C) to section 12A-Dr. Manoj Fogla, Suresh Kumar Kejriwal, Tarun Kumar Madaan (2024) 299 Taxman 45 (Mag.)/ 164 Taxmann. com 692 (Article)

Finance Bill, 2024-Practical difficulties in complying with section 194T-Dindayal Dhandaria, CA (20024) 299 Taxman 59 (Mag.)/ 165 taxmann. com 140 (Article)

Finance Bill, 2024-Critical appreciation of amendments proposed in Finance (No. 2) Bill, 2024-V. K. Subramani, FCA (2024) 299 Taxman 65 (Mag.)/ 165 taxmann. com 137 (Article)

Faceless assessment-From Jurisdictional to Faceless : Navigating the changing Landscape of Income tax Assessments-by Andeep Goyal Adv. & Sameesh Bassi Adv. dt. 24. 12. 2024,www. itatonlin. org.

Finance Bill, 2024-Budget 2024 & Changes For LLP And Partnership Firms - Deepak P. Singh, dt. 12. 08. 2024. www. itatonline. org

Five Finance Bills of the 21st Century that shaped Tax Jurisprudence in India-Shri S. K. Gupta Former Member CBDT-Chamber's Journal-(2024) February-P. 11 to 18

Finance Budget-Interim Finance Budget, 2024-Pradeep Kasthala & Rajitha Boorgu-Chamber's Journal-(2024) February-P. 19 to 22

Finance Bill, 2024-Method in Madness-Vipul Joshi Advocate (2024) AIFTPJ-August P. 9

Finance Bill, 2024-Critical Comments-Dr. K. Shivaram Senior Advocate & Shashi Bekal Advocate (2024)AIFTPJ-August-P. 18 , www.itatonline .org

Finance Bill, 2024-Critical Analysis of certain Amendments made in Budget 2024-25 relating to Capital Gain Tax-Prem lata Bansal Senior Advocate, (2024)AIFTPJ-August-P. 24

Finance Bill, 2024-Block assessment in Search cases-Reintroduction of Chapter XIV-B in the Income-tax Act, Ganesh Purohit Senior Advocate (2024)AIFTPJ-August-P. 26

Finance Bill, 2024-Certain Proposals of Fianace (No 2)Act 2024, which need to be noticed-Samir Jani Advocate, (2024)AIFTPJ-August-P. 31

Finance Bill, 2024-Rates of tax & Amendments related to Income from Salary-Kinjal Bhuta, Advocate, (2024)AIFTPJ-August-P. 36

Finance Bill, 2024-Amendments to provisions of Charitable Trust-Ashok Mehta CA (2024)AIFTPJ-August-P. 43

Finance Bill, 2024-Navigating the Taxation of Rental Income : Insights in to Recent Changes-G. Baskar, Advocate, (2024)AIFTPJ-August-P. 48

Finance Bill, 2024-Amendment under Finance (No. 2) Act, 2024, in respect of income from business and profession, Haresh Kenia CA & Keval Gandhi CA, (2024)AIFTPJ-August-P. 50

Finance Bill, 2024-Amendments vide Finance (No. 2) Act, 2024, in respect of Capital Gain, V. P. Gupta, Advocate (2024)AIFTPJ-August-P. 55

Finance Bill, 2024-The Finance (No. 2) Act, 2024-Amendments relating to Buy Back of Shares, A. K. Srivastav CA, (2024)AIFTPJ-August-P. 59

Finance Bill, 2024-Search and Seizure-Reintroduction of Block Assessment by Finance (No. 2) Act, 2024-Ajay R. Singh and A. F. Jahangir Advocate, (2024)AIFTPJ-August-P. 63

Finance Bill, 2024-Amendments to Provisions of Reassessment by Finance (No. 2) Act, 2024-Ajay R. Singh and A. F. Jahangir Advocate, (2024)AIFTPJ-August-P. 86

Finance Bill, 2024-Mixed bag of amendments in TDS and TCS Provisions, Kishor Phadke CA (2024)AIFTPJ-August-P. 97

Finance Bill, 2024-Provisions of Finance Act, related to International Financial Service Centre-Sruti Kalyanikar, Advocate (2024)AIFTPJ-August-P. 101

Finance Bill, 2024-Amendments with respect to Appeals to Commissioner (Appeals) & Income Tax Appellate Tribunal, Rahul Hakani, Advocate, (2024)AIFTPJ-August-P. 104

Finance Bill, 2024-Amendment in Penalty Provisions-S. M. Surana Advocate (2024) AIFTPJ-August-P. 108

Finance Bill, 2024-Amendments in Section 276B of the Income-tax Act, 1961-Sameer Dalal Advocate, (2024)AIFTPJ-August-P. 111.

Finance Bill, 2024-Amendments by the Finance (No 2) Act, in relation to sections 131, 131A 153, 244A and 245-Upendra J. Bhatt Advocate, (2024)AIFTPJ-August-P. 114

Finance Bill, 2024-The Direct Tax Vivad Se Vishwas Bill, 2024, Dinkal Hariya, Advocate, (2024)AIFTPJ-August-P. 116

Finance Bill, 2024-Changes in International Taxation Provisions under Finance (No. 2 Act, 2024, Paresh P. Shah CA, (2024)AIFTPJ-August-P. 131

Finance Bill, 2024-Amendments by the Finance (No. 2) Act, 2024, in related Transfer Pricing (ALP) and Advance Ruling Dispute Resolution Panel, Piyush Baid, FCCA MCSI,(2024) AIFTPJ-August-P. 139

Finance Bill, 2024-Amendments by the Finance (No. 2) Act, 2024, in relation to Black Money Act, 2015 and Benami Property Transactions Act, 1988, Aditya Ajgaonkar Advocate, (2024) AIFTPJ-August-P. 140

Finance Bill, 2024-Executive Summary of amendments Introduced vide Finance (No. 2) Act, 2024-Hitesh R. Shah CA (2024) AIFTPJ-August-P. 155

G.

GAAR-Understanding India's general Anti-Avoidance Rules (GAAR) frame work : A comprehensive over view-S. K. Tulsiyan Advocate (2024) 301 Taxman 57 (Mag)/ 168 taxmann. com 87 (Article)

Goods and Service tax-No service tax /Goods and Services Tax on dealers of lottery tickets-R. Santhanam (2024) 341 CTR (Articles) 14

Goods and Service tax-Goods and Service tax on online gambling and games of chance-R. Santhanam (2024) 336 CTR 13 (Articles)

Goods and Service tax-Decoding GST-Corporate Guarantee: Quasi capital or taxable service-Sunil Gabhawalla, Rishabh Singhvi, Parth Shah, Chartered Accountants (2024) January-P. 75

Goods and Service tax-Decoding GST-Credit Notes in a GST Scenario-Sunil Gabhawalla, Rishabh Singhvi, Parth Shah, Chartered Accountants (2024) February-P. 82

Goods and Service tax-Decoding GST-Punctuations and Grammar (Interpretation of statutes) Sunil Gabhawalla, Rishabh Singhvi, Parth Shah, Chartered Accountants (2024) March-P. 68

Gift of a capital asset-Whether the gift of a capital asset by a corporate entity be subjected to Income tax ? Sneh Machchhar Chartered Accountant (2024) BCAJ-October-P, 27

Gift City : Hits and Misses (Direct and Indirect Taxation Aspects-Aswin Nag & Kankia Jain, advocates –(2024) AIFTPJ-May-P. 75

GST-ITC on GST paid repair of vehicles By Insurance Companies - Deepak P. Singh, dt. 12. 08. 2024. www. itatonline. org

GST-GST Impact On Insurance Sector -Deepak P. Singh, dt. 12. 08. 2024. www. itatonline. org

GST : A good & Simple Tax-Controversial issues and possible solutions-Keerthana S. Assistant Professor (Law)-(2024) AIFTPJ-June-P. 52

GST : A Good and & Simple Tax-Controversial issues and possible solutions-Devashree Dangi, Advocate (2024) AIFTPJ-June P. 68

GST: A Good & Simple tax-Controversial issues and possible solutions-Arun Gupta, Advocate-(2024) AIFTPJ-September-P. 71

Global Capability Centers-Policy Landscape-Ajay Rotti& Nimita Gandhi-Chamber's Journal –(2024) December-P. 84-90

I.

Income-tax Act,1961-A comprehensive review of the Income-tax Act, 1961 : Preliminary observations, Dr. K. N. Chaturvedi, Advocate, Supreme Court (2024) 301 Taxman 49 (Mag)/ 167 taxmann. com 629(Article)

Insolvency & Bankruptcy Code, 2016-Would IBC prevail over the PMLA ?-Law and Business-Dr. Anup P. Shah Chartered Accountant (2024) BCAJ-November P. 101

Interview-Dr. Nishit Desai Advocate-(2024) BCAJ-November-P. 11

Interview-CA Rajeev Thakkar –(Chief Investment Officer and Director PPFAS Asset Management Ltd) "When you are buying Equities, have the business owner's mindset, rather than trying to Flip it every now and then" (2024) BCAJ-October-P. 13

Immovable property Transactions : Direct tax and FEMA Issues for NRIs-International Taxation-Namrata R. Dedhia CA (2024) BCAJ-April P. 11

Interpretation-Binding precedent-Which ruling should be applied if two-Non Jurisdictional Courts make conflicting decisions ? Mukesh Kohli, FCA (2024) 300 Taxman 11 (Mag.) /165 taxmann. com 784 (Article)

Interest paid on taxes-Allowability under section 37 of the Act-H. N. Motiwalla, Chartered Accountant. (2024) 460 ITR 21 (Journal)

International Taxation-Residential status of individuals-Interplay with tax treaty-Mahesh G. Nayak Chartered Accountant (2024) BCAJ-January-P. 19

International Taxation-" Wait---What ? " is Singapore taxing Capital Gains ? Sanjay V Iyer CA (Scottland) (2024) BCAJ-February-P. 27

International Taxation-Residential status-Whether employment includes self employment-Mayur B. Nayak, Tarunkumar G. Singhal, Anil D. Doshi, Mahesh G. Nayak, Chartered Accountants (2024) BCAJ-March-87

International Taxation-Indian tax treaties and most favoured Nation Clause-Prabhakar K. S (2024) 297 Taxman 19 (Mag.) 159 taxmann. com 274 (Article)

International Taxation-Issues relating to grand fathering provisions in the Mauritius and Singapore DTAA-Mayur B. Nayak, Tarunkumar G. Singhal, Anil D. Doshi, Mahesh G. Nayak, Chartered Accountants (2024) BCAJ-December –P. 105

International taxation-Tie Breaker Rule-Analysis thereof for determination of Residential Status of an Individual Centre of Vital Interest-A. K. Srivastava CA dt. 24. 12. 2024 www. itatonline. org.

International Taxation-New Chapter in the Saga of India-Mauritius Tax treaty (Pre 2016 amendment)-Hardik Mehta CA & Arwa Mahabaleshwarwala (2024) AIFTPJ-May-57

International Taxation-Impact of UAE Corporate tax law vis a vis India-UAE corridor-Part 1-Hardik Mehta CA & Arwa Mahabaleshwarwala (2024) AIFTPJ-June –31

International Taxation-Impact of UAE Corporate tax law vis a vis India-UAE corridor-Part 2-Hardik Mehta CA & Arwa Mahabaleshwarwala (2024) AIFTPJ-September –P-31

International Taxation-Tax Residency Certificate-Gateway to DTAAs-Hardik Mehta CA & Arwa Mahabaleshwarwala (2024) AIFTPJ-November –P-64

International Taxation-The India-US Tax treaty Tie-breaker on Residency: Navigating Dual Citizenship Tax Complications-Piyush Baid, FCCA MCSI (2024) AIFTPJ-November-P. 69

International Taxation-Emigrating Indian-Tax and Regulatory Considerations-Hardik Mehta CA & Arwa Mahabaleshwarwala (2024) AIFTPJ-December –P-46

International Taxation-Navigating Tax Diplomacy : Switzerland's Suspension of Unilateral MFN Benefits-Sachin Sastakar CA & Vasudevan, Advocate (2024) AIFTPJ-December-P. 54

Income-tax Act,1961-The Income-Tax Renaissance : Embracing Technology for widening tax Base-(Palkhivala Memorial Research paper –3rd position)-Ishita Singh & Sahastranshu Pandey (Law students) (2024) AIFTPJ-February-P. 63

ITR Forms-New ITR Forms-Changes introduced in ITR-2, 3 and 5 for Assessment year 2024-25-Taxman Advisory and Research Team (Income-tax) (2024) 297 Taxman 69 (Mag.) /159 taxmann. com 87 (Article)

ITR Forms-New ITR-7 Form for AY. 2024-25 : A guide to key changes-Taxman Advisory and Research Team (Income-tax) (2024) 297 Taxman 69(Mag.) /160 taxmann. com 540 (Article)

Interim Budget 2024: Paying the way for a 'Viksit Bharat'-A blue print in making-Assem Chawla (2024) 297 Taxman 33 (Mag.) 159 taxmann. com 705 (Article)

Income Tax Appellate Tribunal-Selection Of Members Of The Income Tax Appellate Tribunal: Some Suggestions-Ajay Wadhwa, Adv. dt. 14. 11. 2024, www. itatonline. org.

Income Tax Appellate Tribunal (Itat): Laws, Regulations, Procedures, and Updates Under The New Regime - Brijesh Baranwal, dt. 04. 11. 2024. www. itatonlline. org.

Income tax Appellate Tribunal-Superannuation-Important Judgments of Honourable Shri A. D. Jain, Vice-President, Income-tax Appellate Tribunal, Chandigarh - Neelam Jadav Adv. dt. 30. 10. 2024. www. itatonline. org.

Income tax Appellate Tribunal-Superannuation-50 Important Judgements of Honourable Shri G. S. Pannu, Vice-President, Income-tax Appellate Tribunal, New Delhi- Neelam Jadhav, Adv. dt. 30. 07. 2024. www. itatonline. org

Income tax Appellate Tribunal-Role of ITAT in contemporary times and the way forward"-by Hon'ble Justice (Retd) S. C. S. C. Dharmadhikari, by Hon'ble Justice (Retd) S. C. S. C. Dharmadhikari, dt. 31. 01. 2024. www. itatonline. org

Interpretation-Annul vs. Set Aside: Judicial Interpretations & Legal Implications-Milind Wadhwani CA, dt. 02. 10. 2024. www. itatonline. org
Intellectual Property Rights-Amendments & Discrimilanisation Of Intellectual Property Rights Laws Vide Jan Vishwas (Amendment In Provisions) Act, 2023. Deepak P. Singh, dt. 09. 08. 2024. www. itatonlin. org

IBC-Examining the implications of Section 32A of the IBC with respect to release of properties attached under PMLA after sale of liquidation assets / successful resolution through IBC-Aditya Ajgaonkar, Advocate (2024) AIFTPJ-March-37

Income-tax Appellate Tribunal-Dr. K. Shivaram Senior Advocate-(2024) AIFTPJ-May-9

J.
Jurisdictional Assessing Officer-Authority of JAO, Redefined, Rahul Gupta, Simarjot Singh, Himanshi Bansal (2024) 300 Taxman 25 (Mag)/ 166 taxmann. com 119 (Article)

Journey of profession-My Lineage: How I Was Moulded-An Inspiring Journey of S. N. Inamdar, Senior Adv. -S. N. Inamdar, Senior Adv. 23. 02. 2024. www. itatonline. org

L.
Limited Liability Partnerships-Relevant auditing and accounting considerations-Ridhima Dubey CA –(2024) BCAJ-April P. 19

Land Mark Cases-Jignesh R. Shah, Advocate, High Court, Mumbai (2024) 460 ITR 25 / (461 ITR 1 / 462 ITR 21 / 463 ITR 10 / 464 ITR 37 /465 ITR 19/ 466 ITR 1/ 467 ITR 1 / 468 ITR 21 / 469 ITR 55/ 470 ITR 1 /471 ITR 1(Journal) (Articles)

Listing of Indian Companies-Direct Listing of Indian Companies on International Exchanges-Dr. Anup P. Shah, Chartered Accountant (2024) March-P. 95.

M.
March of law and Judiciary-(Bharat and BCAS-The March towards a Centenary)-Amit Deasi (2024) July-P 11

Minor's dealings-Major Implications-Laws and Business-Dr. Anup P. Shah Chartered Accountant-(2024) BCAJ-May-P. 103

Motor Vehicle Act-A correlation of 'Compensation' under the Motor Vehicle Act to income disclosed in ITR-Srinivasan Anand G. (2024) 298 Taxman 7 (Mag.) 160 taxmann. com 266 (Article)

N.

Non-Residents-Gift and Loans-By and to Non-Resident Indians : Part I-International Taxation-Harshal Bhuta, Naisar Shah Chartered Accountants (2024) BCAJ-November 21

Non-Residents-Gift and Loans-By and to Non-Resident Indians : Part II-International Taxation-Harshal Bhuta, Naisar Shah Chartered Accountants (2024) BCAJ-December 17
Non-Residents-Bank Accounts and Repatriation Facilities for Non-Residents-International Taxation-Hardik Mehta, Arwa Mahabaleshwarwala Chartered Accountants (2024) BCAJ-October-P. 39

NBFCs (Non-Banking Financial Companies) : Scale-Based Regime-Laws and Business-Dr. Anup P. Shah, Chartered Accountant (2024) September-P. 131.

Nominee-Shares-Nominee vs. Will : and the winner is-----? Dr. Anup P. Shah, Chartered Accountant (2024) February-P. 100.

New tax Regime-Analysis On Old And New Tax Regime Under Income Tax Act, 1961-Neha Sadhwani & Pavan H Menon, dt. 25. 10. 2024. www. itatonline. org.

New tax Regimes-Analysis Of New And Old Tax Regimes Under Income Tax Act Of 1961 - Varsha S. dt. 25. 10. 2024. www. itatonline. org.

Non-Resident-Is Investment In Private Limited Company, A Nightmare For Non-Resident Investors-A Critical Analysis - Dr. S. Sankar Ganesh, dt. 03. 04. 2024. www. itatonline. org

NFRA-Analysis of Inspection Reports issued by NFRA on Audit Firms-Milan Mody-(2024) March-P. 97-101

NRI Taxation-Decoding NRI Taxation Landscape-Charmi Shah CA (2024) AIFTPJ-December-P. 16

O.

Outstanding Income-tax demand-Opinion-Outstanding Income-tax demand (S)-Prabhakar K. S., Shree tax chambers (2024) 296 Taxman 17 (Mag.)/ (2023) 157 taxmann. com 378 (Articles)

P.

Prosecution-Criminal proceedings against proclaimed offenders in absentia (Bhartiya Nagrikha Surasksha Sanhita, 2023(BNSS)-R. Santhanam (2024) 341 CTR (Articles) 9

Prosecution-Exercise of inherent Powers of High Courts to quash criminal cases-R. Santhanam (2024) 340 CTR 13 (Articles) (2024) 340 CTR 13 (Articles)

Prohibition of Benami Property Transactions Act, 1988-Penal action against benami holding properties-R. Santhanam (2024) 340 CTR 7 (Articles)

Prohibition of Benami Property Transactions Act, 1988-Finance Bill, 2024-Immunity to benamidar from penal action-R. Santhanam (2024) 340 CTR 1 (Article)

Penalties-Emerging issues in respect of penalties for under reporting and misreporting of incomes-(S. 270A, 270AA) V. K. Subramani (2024) 297 Taxman 55 (Mag.) 159 taxmann. com 177 (Articles)

Prevention of Money Laundering Act, 2002 (PMLA))-Potential areas of conflict of PMLA and Income Tax Act-Prashant KR Jha, Piyush Baid (2024) 299 Taxman 72 (Mag)/ 161 taxmann. com 733 (Article)

Prevention of Money Laundering Act, 2002-The attachment of Overseas Properties under the Prevention of Money Laundering Act, 2002-Aditya Ajgaonkar, Advocate (2024) AIFTPJ-June-P. 20

Prevention of Money Laundering Act, 2002-The Evolution of Bail Jurisprudence under the Prevention of Money Laundering Act, 2002(PMLA)-Aditya Ajgaonkar & Rupal Shrimal, Advocates (2024) AIFTPJ-December-P. 28

Pendency of Appeals before First Appellate Authority up to 1-1-2024 (2024) AIFTPJ March 69

R.

Reassessment-Illustrations on validity of reassessment notices after Rajeev Bansal's case, Dr. Vinod K. Singhania, leader-Research and Advisory, Taxman, Rahul Singh CA Senior Manager-Research and Advisory, Taxman (2024) 301 Taxman 1(Mag.)/ 167 Taxman 148 (Article)

Recovery of tax due-Pay bank loan first, then income tax dues, Meenakshi Subramaniam, Former IRS Officer, (2024) 301 Taxman 19 (Mag.)/ 167 taxmann. com 35 (Article)

Reassessment-With defences available u/s 149 to TOLA batch of reassessment notices, made to become a mirage, what next for asseessees?-Mayank Mohanka Senior Partner, S. M. Mohanka & Associates (2024) 301 Taxman 33 (Mag) /167 Taxman.com 310 (Article)

Revised return-How far a revised return could provide relief to the tax payer ?-V K Subramani FCA (2024) 301 Taxman 51(Mag)/ 168 taxmann. com 55 (Article)

Related party transactions : The purpose & Effect Test-Laws and Business-Dr. Anup P. Shah Chartered Accountant-(2024) BCAJ-June-P 93

Reassessment-Income tax reassessment-Ignoring insolvency & Bankruptcy Code, 2016 (IBC) R. Santhanam (2024) 339 CTR 47 (Articles)

Reassessment-Reassessment notices barred by Limitation-R. Santhanam (2024) 338 CTR 39 (Articles)

Reassessment-Incorrect use of Article 142 for Income tax reassessments-R. Santhanam (2024) 338 CTR 9 (Articles)

Registration Act, 1908-Effect of unregistered documents-Dr. Anup P. Shah, Chartered Accountant (2024) BCAJ-January-P. 102

Return-Return filing for Assessment year 2024-25-Ashok Mehta, Chartered Accountant (2024) AIFTPJ-February-P. 41

Real Estate-Income-tax implications and accounting in the real estate sector-Demystifying Joint Development Agreements (JDAS) and other construction contracts-Navneet Singal, Tax litigation Advisor (2024) 296 Taxman 1 (Mag.)(2023) 157 taxmann. com 255 (Article)

Return-Know about changes Introduced in the new ITR-6 Released for assessment year 2024-25-Taxman Advisory and Research Team (Income tax) (2024) 296 Taxman 49 (Mag.) 158 taxmann. com 702 (Article)

Redevelopment-What Every Flat Owner Must Know About Redevelopment - Vivek N. Chavda, Adv. Gujarat dt. 24. 12. 2024. www. itatonlie. org.

Reassessment-Note on Supreme Court ruling in Rajeev Bansal- Samir N. Divatia Adv. dt. 24. 12. 2024 www. itatonline. org.

Reassessment-Legal conundrums in the wake of the Supreme Court decisions in Ashish Agarwal & Rajeev Bansal-Arjun Gupta Adv. dt. 06. 12. 2024,www. itatonline. org.

Reassessment-With Due Respect–No Contempt-Depth Analysis of the Supreme Court Judgement of Rajeev Bansal - Tushar Hemani, Sr. Adv. & Siddharth Hemani, Adv. dt. 30. 11. 2024. www. itatonline. org.

Reassessment-Comparing The Changes In The Reassessment Regime In Finance Bill (2), 2024 And The Law As It Stood Before - Ananiyasri R, dt. 25. 10. 2024. www. itatonline. org.

Rural land-No Income Tax On Compulsory Acquisition Of Rural Land- Brijesh Baranwal, CA. dt. 29. 02. 2024. www. itatonline. org.

Reassessment-Demystifying Re-assessment procedure in Income-tax Act, 1961-Rohit Kapoor CA (2024) AIFTPJ-May-24

Res judicata : All you need to know About-Anjana Singh, advocate (2024) AIFTPJ-39

Reassessment-T. K. S. Builders (P) Ltd v. ITO : A Case Review-Piyush Baid FCCA MCSI (2024) AIFTPJ-December-P. 25

RERA-Professional Opportunities in RERA-Ramesh Prabhu CA –(2024) AIFTPJ-September-P. 21

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RERA-Appeals under RERA-Ramesh Prabhu, CA (2024) AIFTPJ-33

S.

Stay-Power of AO to grant stay-Whether discretionary or controlled by the Instructions and Circulars-Jagdish T. Punjabi Chartered Accountant-(2024) BCAJ-May-P 11

Stay-Parameters for stay of collection during pendency of first appeal under the Income-tax Act, 1961-Sanjay Bansal Senior Advocate (2024) 460 ITR 1 (Journal)(Articles)

Successor-Tax implications in the hands of Successor / resulting company-Viral Shah Chartered Accountant-(2024) BCAJ-May-P. 27

Special Leave Petition (SLP)-On Direct Taxes-By Neelam Jadav Advocate –(2024) February-P. 59

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Special Leave Petition (SLP)-On Direct Taxes- Neelam Jadhav, Adv. dt. 30. 11. 2024. www. itatonline,org (2024) AIFTPJ-November-P 74

Special leave Petition (SLP)-On Direct Taxes-Neelan Jadhav Advocate (2024) AIFTPJ-December-P. 59

Search and Seizure-Jewellery found during search-How far does CBDT instruction come to the assessee's rescue in post-search assessments-Subash Agarwal, Advocate (2024) AIFTPJ-20

T.

Tax demand-Analysis of CBDT's order on withdrawal of outstanding tax demand-Tax Advisory and Research Team (Income-tax) (2024) 297 Taxman 29(Mag.) 159 taxmann. com 591 (Article)

Tax litigation-Common errors by the tax Authorities-" To err is human But …. "-V. N. Muralidharan, FCA (2024) 463 ITR 1 (Articles)(Journal)

Tax Residency Certificates : Another litigious issue brewing ? (S. 90(2), 90((4))-Kunal Singal CA (2024) 299 Taxman 61 (Mag) / 164 taxmann. com 215 (Article)

Tax Jurisprudence-Lady Justice never wore a blindfold when it came to Tax Jurisprudence in India-Aditya Ajgaonkar, Adv. dt. 02. 12. 2024 www. itatonline. org. (2024) AIFTPJ-November P. 43

Taxation-Defending Economic Liberty: India's Resistance to Draconian Taxation Measures -Shashank Shukla, dt. 02. 05. 2024. www. itatonline. org

Tax perspective-A Veteran's view point-Towards a more beneficent tax system-Shri Shorab E. Dastur Senior Advocate-The Chamber's Journal (2024) January P. 11 to 14

Tribute to Late Shri S. N. Inamdar Senior Advocate-(2024) Chamber's Journal-September-P. 9 to 16.

Tribute to Late Shri S. N. Inamdar Senior Advocate-Dr. Y. P. Trivedi Senior Advocate (2024) Chamber's Journal-September-P. 9.

Tribute to Late Shri S. N. Inamdar Senior Advocate-Dr. K. Shivaram Senior Advocate (2024) Chamber's Journal-September-P. 10.

Tribute to Late Shri S. N. Inamdar Senior Advocate-Vipin Batavia (2024) Chamber's Journal-September-P. 11

Tribute to Late Shri S. N. Inamdar Senior Advocate-K. Gopal (2024) Chamber's Journal-September-P. 12

Tribute to Late Shri S. N. Inamdar Senior Advocate –Jayant Gokhale (2024) Chamber's Journal-September-P. 13

Tribute to Late Shri S. N. Inamdar Senior Advocate –Sunil Pathak (2024) Chamber's Journal-September-P. 15

Tribute to Late Shri S. N. Inamdar Senior Advocate –Pradeep R. Rathi (2024) Chamber's Journal-September-P. 16

U.

Undisclosed income-Issues in taxation of undisclosed income-(S. 115BBE) V. K. Subramani (2024) 297 Taxman 63 (Mag.)/ 159 taxmann. com 671 (Article)

W.

Waiver of small past demands of tax payers –Recovery-R. Santhanam (2024) 338 CTR 19 (Articles)

With due respect-No contempt-legal Analysis of the decision in the case of PCIT v. WIPRO Ltd (2022 446 ITR 1 (SC)-Vipul Joshi, Advocate-(2024) AIFTPJ-September-P. 48

With due respect-No contempt-Analysis of the Special Bench decision in the case of SKF India Ltd-Vipul Joshi, Advocate-(2024) AIFTPJ-November-P. 83

With due respect-No contempt-In Depth Analysis of the Supreme Court Judgement of Rajeev Bansal-Tushar Hemani Senior Advocate-(2024) AIFTPJ-November-P. 103

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